



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Revision Petition No. 1106/2006

Mushtaq Ali S/o Fakir Ali Musalman, R/o Kanera, presently  
residing at Nimbahera District Chittorgarh

-----Petitioner

Versus

State Of Rajasthan

-----Respondent



For Petitioner(s) : Mr. Manish Pitaliya  
For Respondent(s) : Mr S.S. Rathore, Dy.G.A.

**HON'BLE MR. JUSTICE FARJAND ALI**

**Order**

**ORDER RESERVED ON :: 21/05/2025**  
**ORDER PRONOUNCED ON :: 17/06/2025**  
**REPORTABLE**  
**BY THE COURT:-**

1. The present revision petition has been filed challenging the judgment of conviction and order of sentence dated 23.02.2006, passed by the learned Civil Judge (Junior Division)-cum-Judicial Magistrate, Chittorgarh in Criminal Case No. 15/1997. By the said judgment, the petitioner was convicted for the offence under Section 223 of the Indian Penal Code (IPC) and imposed a fine of ₹2,000/-, with a further direction that in default of payment of the fine, he would undergo simple imprisonment. The said judgment was upheld by the learned Appellate Court vide order dated 23.06.2006 passed in Criminal Appeal No. 20/2006.
2. The essential facts required for adjudication of the present petition are as follows:



2.1. At the relevant time, the petitioner was serving as a police constable at Police Station Chanderiya, Chittorgarh. He was assigned guard duty and was also responsible for managing wireless communication at the police station.

2.2. Two under-trial prisoners, namely Suresh Kumar and Rajak Khan, were in lawful custody at the said police station. Due to the absence of a designated lock-up facility, the accused were kept handcuffed, and their shackles were tied to a table inside the office of the Station House Officer (SHO).

2.3. During the intervening night of 20th and 21st June 1994, a sudden power outage occurred. In the absence of electricity and ventilation during peak summer conditions, the under-trial prisoners began shouting for relief due to suffocation and excessive heat. Acting out of humanitarian concern, and given the extreme temperature and ventilation issues, the petitioner moved the accused outside the SHO's office and secured their handcuffs to a pillar in an open area.

2.4. Taking advantage of the darkness and the petitioner's limited resources, the two accused managed to escape by freeing themselves from the restraints. Since the petitioner was the custodian of the accused and in possession of the keys to the shackles, he was held accountable for the escape and was subsequently charged with negligence under Section 223 IPC.

3. I have heard learned counsel for the parties and carefully examined the record of the case.



3.1. Section 223 of the IPC pertains to escape from lawful custody due to negligence by a public servant who is legally bound to confine or guard a person. The primary requirement for conviction under this provision is the establishment of "criminal negligence" which directly results in the escape of the detainee.

3.2. The concept of criminal negligence, as contemplated under Section 223 IPC, has been consistently interpreted by courts to require a gross and culpable failure to exercise the degree of care which an ordinarily prudent and reasonable person would exercise in similar circumstances. Not every error in judgment, lapse, or inadvertent act constitutes criminal negligence.

3.3. The Hon'ble Supreme Court in **Jacob Mathew v. State of Punjab, (2005) 6 SCC 1**, observed that criminal negligence involves:

- A legal duty owed to another person (such as by a police officer toward detainees);
- A reckless disregard of foreseeable consequences;
- And an act or omission creating an obvious and serious risk of harm that was both foreseeable and preventable.

3.4. The doctrine of criminal negligence, particularly in the context of custodial responsibility under Section 223 IPC, demands a calibrated understanding of the threshold of culpability distinguishable from mere civil or administrative lapses. It is not every deviation from ideal conduct or lapse in vigilance that attracts penal consequences; rather, the law mandates a



demonstration of such a degree of recklessness or gross dereliction of duty that it evidences a conscious disregard for the foreseeable consequences of one's omission. The jurisprudential distinction between civil and criminal negligence lies primarily in the presence of mens rea in the latter — an element of moral blameworthiness or at the very least, a recklessly indifferent attitude towards the duty imposed by law. In the case of a police official tasked with dual and simultaneous responsibilities — such as guarding under-trial prisoners while also attending to wireless operations in emergency-like conditions — the expectations of flawless, uninterrupted supervision must be weighed against the practical limitations of manpower and infrastructure. Criminal negligence cannot be predicated on errors of judgment or bona fide acts taken under emergent circumstances, particularly when driven by humanitarian considerations and lacking any element of intent or recklessness. Further, the application of criminal law must be tempered with a contextual and fact-sensitive inquiry: whether the accused acted in a manner that an ordinarily prudent officer, faced with similar constraints, would regard as palpably indefensible. When viewed through this prism, the act of momentarily relocating the detainees to an open space, while retaining their handcuffs, amid a power outage and oppressive summer heat, cannot be readily equated with the grave dereliction that Section 223 IPC seeks to penalize. Indeed, the standard is not one of perfect foresight or hypothetical diligence, but of reasonableness under prevailing circumstances. The petitioner's



conduct, however ill-fated in its consequence, does not rise to the level of culpable indifference or reckless disregard that the penal statute contemplates. It is well settled that penal provisions must be construed strictly, and in cases of doubtful culpability, the benefit must enure to the accused. Thus, in absence of proof establishing that the petitioner's act was so grossly negligent as to manifest a departure from the expected norms of custodial care, the invocation of Section 223 IPC cannot be sustained.

4. In the present case, it is evident from the record that the escape of the accused was not the result of any wilful, deliberate, or grossly negligent act on the part of the petitioner. Rather, it arose from a convergence of extraordinary and unforeseen circumstances, including:

- A sudden and unanticipated power failure;
- The absence of a designated lock-up facility at the police station;
- The unbearable heat and lack of ventilation during peak summer;
- And the petitioner's simultaneous responsibility for wireless communication duties.

4.1. The petitioner had kept the accused handcuffed and under watch. In response to the distress of the detainees due to extreme weather conditions, he relocated them to a relatively open and breathable space while continuing to keep them restrained. This



act appears to have been driven by humane considerations, rather than any intent or recklessness to facilitate an escape.

4.2. Upon careful consideration of the facts, the following observations emerge:

- The petitioner was performing dual duties, both as guard and wireless operator, which diluted his ability to maintain uninterrupted physical supervision.
- There was no lock-up facility available, and the accused were already handcuffed and tethered inside the SHO's office.
- In response to the deteriorating physical condition of the detainees caused by the power outage and heat, the petitioner took a pragmatic and compassionate step to shift them to an open area while still restraining them.
- The escape occurred despite the continued application of restraints and was not directly facilitated by any grossly negligent conduct.
- The prosecution failed to establish, beyond reasonable doubt, that the petitioner's conduct amounted to criminal negligence within the meaning of Section 223 IPC.

4.3. It is well established in law that criminal negligence involves a substantial deviation from the standard of care expected of a reasonable person. Mere errors in judgment or omissions in the face of difficult circumstances do not constitute such culpability.



5. This Court is of the considered opinion that the findings recorded by the Trial Court, as well as the Appellate Court, suffer from legal and factual infirmities. The essential ingredients of the offence under Section 223 IPC have not been proved against the petitioner.

6. Accordingly, the revision petition is allowed. The judgments dated 23.02.2006 and 23.06.2006 passed by the learned Civil Judge (jr. Dn.) cum Judicial Magistrate, Chittorgarh in Cr. Case No.15/1997 and learned Addl. Sessions Judge No.1, Chittorgarh in Cr. Appeal No.20/2006 are hereby quashed and set aside. The petitioner is acquitted of all charges. His bail bonds stand discharged.

7. Let the record be returned forthwith.

**(FARJAND ALI),J**

13-Mamta/-