

**Criminal revision no. 929 of 2001**

Bahadur Singh Pawar

..Revisionist.

Vs.

State of Uttaranchal  
& another

..Respondents

**Hon'ble Irshad Hussain J.**

This revision under sections 397/401 of the Code of Criminal Procedure is directed against the judgment and order dated 30.07.2001 passed by I Additional Civil Judge (Jr.Div.)/Judicial Magistrate, Hardwar in criminal case no.508 of 2001, acquitting the accused-respondent no.2 of the charges under sections 279, 427, 304-A of the I.P.C. The revisionist is the informant who had lodged the F.I.R. of the case.

The accident which resulted in submission of the chargesheet against the accused-respondent no.2 took place on 24.08.1995. After recording the statement of the accused, the case was posted for recording of the prosecution evidence by the learned Magistrate. Informant-revisionist Bahadur Singh Pawar was examined as P.W.1. He was not the eye witness of the occurrence. Darshan Singh, P.W.2 and Phooman Singh, P.W.3 were the eye witnesses of the accident and after recording their examination-in-chief, cross-examination was deferred on the request of the defence counsel. The learned Magistrate later on closed the evidence of the prosecution and after recording the statement of the accused-respondent no.2 under section 313 of the Code of Criminal Procedure, delivered the impugned judgment of

acquittal. It was observed that the prosecution had not produced the entire evidence including the scribe of the F.I.R. and the witness who made technical examination of the vehicle involved in the accident. The revision was filed to have the impugned judgment and order set aside on the plea that the learned Magistrate had made no efforts to summon the witnesses and hastily disposed of the trial acquitting the accused-respondent no.2

Heard Sri Nanak Chandra Gupta, learned counsel for the revisionist and the learned A.G.A. and perused the record of the case.

At the outset it need to be mentioned that this revision has to be allowed. The reason is that the record reveals that the cross-examination of the two eye witnesses mentioned above was deferred. No efforts were made to procure their attendance. The learned Magistrate should have resorted to coercive measures so that the two eye witnesses of the accident could be produced for cross-examination by the defence counsel. Without examining the important witnesses of the case, the evidence was closed in this case. It need to be mentioned that recently a **seven Judges' bench of the Supreme Court in P. Ram Chandra Rai Vs. State of Karnataka, J.T., 2002 (4), S.C., 92, has held that the decisions in the tow 'common cause' cases and Rajdeo Sharma Vs. State of Bihar, J.T. 1998 (7), Supreme Court, I and Rajdeo Sharma (II) Vs. State of Bihar, J.T. 1999 (7), Supreme Court, 317,** were not correctly decided on certain aspects. It was impressed that it is neither advisable nor feasible nor judicially permissible to prescribe an outer limit for conclusion of all criminal proceedings and criminal courts are not obliged to terminate trial of criminal proceedings merely on account of lapse of time.

In view of the above legal position also the decision by the learned Magistrate to close the evidence and acquit the accused was not legally justified and therefore, the judgment of acquittal being unjust and improper need to be set aside.

Revision is accordingly allowed. The judgment and order of acquittal dated 30.07.2001 in criminal case no.508 of 2001 is set aside. There will be retrial of the aforesaid case from the stage of summoning the witnesses P.W.2 and P.W.3 for their cross-examination and the same shall be concluded according to law.

The accused-respondent no.2 shall be summoned to stand retrial accordingly. Record be sent back to the Court concerned.

**(Irshad Hussain J.)**

29.11.02./B.