

**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA.**

**Criminal Appeal No. 510 of 1999.**

**Judgement reserved on:**

**Date of decision :** February 28, 2006.

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State of H.P.

..... Appellant.

Versus

Raj Kumar

..... Respondent.

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Coram

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

*Whether approved for reporting?*

**For the appellant:** Mr. D.S.Nainta, Dy. Advocate General.

**For the respondent:** Mr. G.D.Verma, Sr. Advocate with  
Mr. Romesh Verma, Advocate.

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**Surjit Singh J. (Oral).**

Respondent, Raj Kumar, was sent up for trial for an offence punishable under Section 279 of the Indian Penal Code, by Kandaghat police. A case was registered against him by the police on the basis of statement under Section 154 of the Code of Criminal Procedure, made by Sh. Naresh Kumar, driver of a private bus, which started from Solan on 8.11.1996 at 8.15 a.m. Said Naresh Kumar stated that when he reached a point about 15 meters short of Chail Chowk driving his bus at normal speed, a

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*Whether reporters of local Papers may be allowed to see the judgment?*

bus of Haryana Roadways, bearing registration No. HR-37-1020 appeared from the opposite direction and that the said bus was being driven at excessive speed and also on the wrong side. He stated that on seeing the bus coming on the wrong side and also at the very fast speed, he applied the brakes and brought the bus to a halt, but the Haryana Roadways bus that appeared from the opposite direction rammed into his bus. The police investigated the case. The statement of the conductor and a traffic constable on duty and some passengers traveling by bus of the complainant were recorded. Both the vehicles involved in the accident were got mechanically tested. No mechanical defect was found in either of the two vehicles. On the completion of the investigation, report against the respondent who was driving the Haryana Roadways bus was filed in the court of learned Judicial Magistrate, who after putting the substance of accusation to the respondent, proceeded with the trial and ultimately acquitted the respondent (accused).

The State of Himachal Pradesh, who prosecuted the accused in the court of learned Judicial Magistrate, is not satisfied with the judgement of the trial court, and therefore, it has filed the present appeal.

Learned Deputy Advocate General representing the appellant has taken me through the testimony of Naresh Kumar, the complainant, Brij Mohan, the conductor of the bus which was being driven by the complainant Naresh Kumar, Mansa Ram, traffic constable, who claims to have been on duty at the site of the

accident, Rajinder Singh (PW 4) and Hitender Singh (PW 1) who were traveling by the bus of the complainant.

Though the complainant, while in the witness box, stated that he went to the police station to lodge the first information report, other evidence led by the prosecution suggests that intimation of the accident was given to the police through wireless message by Mansa Ram, constable on duty. A police officer then went to the spot and it was there that statement of Naresh Kumar, complainant was recorded under Section 154 of the Code of Criminal Procedure. Record of the wireless message sent by the traffic constable Mansa Ram to the police station makes an interested reading. According to this message a collision between a truck and a bus had taken place. As a matter of fact, the collision had taken place between two buses. The contents of the wireless message give a complete lie to the testimony of PW 12 Mansa Ram, traffic constable that he saw the accident taking place and that the bus of Haryana Roadways, which came from Shimla side was being driven very fast. It may be stated that admittedly the Haryana Roadways bus was being driven by the respondent.

Complainant Naresh Kumar, in his cross-examination, denied a suggestion put to him that at the site of the accident the bus of Haryana Roadways, being driven by the respondent had overtaken a stationary bus, immediately before the accident had taken place. The conductor of the bus when thrown a similar suggestion admitted the same to be correct. In the statement under Section 154 of the Code of Criminal Procedure, which

Naresh Kumar made to the police, there is no mention of this fact. It appears that Naresh Kumar purposely denied the suggestion that Haryana Roadways bus appeared after overtaking another bus and also deliberately omitted to state this fact while making the statement under Section 154 of the Code of Criminal Procedure to the police, because as discussed in detail by the learned trial Magistrate in his judgement, at the site of the accident there was a slight curve and besides that there was a Chowk (round about where traffic constable remains on duty and where buses and other vehicles appear from different direction), and, therefore, vehicles crossing that Chowk are bound to be slow-down. Now when the respondent had overtaken a stationary bus at the site of the accident, Naresh Kumar, who was driving the other bus, was supposed to have taken his bus to his extreme left, besides slowing it down and even bringing it to a halt, in case road was not wide enough for more than two buses to move parallel to each other.

The scene of the accident was got photographed by the police during the investigation. Photographs Ex. P-2 and P-7 give the impression that Naresh Kumar not only did not take his bus to his extreme left, but the speed of his bus was also very fast because there are skid marks behind his bus in the aforesaid two photographs and also the bus is very close to the white line dividing the road. There is another photograph Ex. P-6, which shows the front side of the bus of the complainant. According to this photograph, the bus of the complainant was, as a matter of fact,

outside the white line dividing the road, meaning thereby that it was slightly on the wrong side.

In view of the above discussed position, it cannot be held with precision that the cause of accident was the alleged rash or negligent driving of the bus of Haryana Roadways by the respondent. This is especially so when the respondent in his statement, under Section 313 of the Code of Criminal Procedure, has said that the accident took place because of rash or negligent driving of the private bus by complainant Naresh Kumar.

For the foregoing reasons, the appeal is dismissed.

**February 28, 2006.**  
**(Hem)**

**( Surjit Singh),**  
**Judge.**