

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

**Cr. Appeal No.348 Of 2000.**

**Date of decision: July 31st, 2007.**

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State of Himachal Pradesh.	..... Appellant.
Vs.	
Kamla Nand and others.	..... Respondents.

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Coram

**The Hon’ble Mr.Justice Surinder Singh, Judge.**

*Whether approved for reporting? No.*

<b>For the Appellant:</b>	Mr. V.K.Verma, Addl. Advocate General.
<b>For the respondents:</b>	Mr. G.D. Verma, Sr. Advocate with Mr. Romesh Verma, Advocate.

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**Surinder Singh, J (oral):**

The respondents faced trial before the Chief Judicial Magistrate and were acquitted, for the offences under Sections 41 and 42 of the Indian Forest Act, in Criminal Case No.221/3 of 1994, for allegedly transporting 42 scants of timber without any permit.

Feeling aggrieved by the impugned judgment delivered on 15.12.1999 in the aforesaid case, the instant appeal has been filed on the ground that the learned trial court had based its findings on conjecture and surmises, without appreciating the factual and legal aspects.

Leave to appeal was granted by this court on 6.7.2000. Now the matter has been finally heard.

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

Mr. V.K. Verma, learned Additional Advocate General has forcefully argued that the learned trial court did not appreciate the evidence of the prosecution in the right perspective, which has resulted into miscarriage of justice. There are grounds to convert the judgment of acquittal into conviction.

Contra, Shri G.D. Verma, learned Senior Advocate, duly assisted by Mr. Romesh Verma, learned counsel for the respondents took me through the evidence on the record and pin-pointed that there is no scintilla of evidence to conclude that the respondents have committed the alleged offence.

Precisely the case of the prosecution has been that Madan Lal, Forest Guard of Khaneri Beat detected 42 slippers of Rai and Kail, lying at Saw Mill of Jhakri, which were allegedly transported by respondent Vikram Singh Negi in Truck No.HP-06-919. He could not produce a valid permit, therefore, the slippers were seized and given on supurdari to M/s Lal Industry, Jhakri. The matter was reported to the police by Deputy Ranger Thakur Ram, on the basis of which a formal FIR was registered. The timber in question was taken into possession. During the investigation, police found that Man Dass respondent was the owner of the timber, which was sold to Vikram Singh, which was transported and stacked at Saw Mill by respondents and 1 and 3 in the truck aforesaid. The damage report was also chalked out. Police recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure. After completing the investigation, the case was presented in the court for trial.

The charges in the aforesaid sections were put to the respondents. They pleaded not guilty and claimed trial. The prosecution examined PW1 Lal Chand-brother of owner of the Saw Mill, PW2 Vidya Singh, PW3 Madan Lal, Forest Guard, PW4 Bhole Ram, PW5, Balbir Singh, PW6 Charan Dass, PW7 Lal Man, PW8 Dev Raj, the Investigating Officer and PW9 Ram Singh, the then SHO. The respondents were also examined under Section 313 of the Code of Criminal Procedure. There case was denial simplicitor. No evidence was led.

It is pertinent to note that the witnesses have tried to make out a different case, than that it was initially set. PW3 Madan Lal is a Forest Guard. According to him, the timber was lying on the road. He verified about the timber from the Saw Miller and also from respondent Vikram Singh. He informed that this timber belonged to Vikram Singh and it was taken into possession by him vide memo Ext.PW1/A. He also chalked out the damage report Ext.PW3/C and thereafter he reported the matter to the Block Officer and the timber was given on supurdari to the Saw Miller, but this fact was not mentioned in the damage report. In the cross-examination, he has admitted that the owner of M/s Lal Industries is the wife of Forest Ranger and surprisingly stated that damage report was correct, but whatever he had deposed in his statement was not correct. Further according to him, damage report Ext.PW3/C was also signed by Lal Chand as a witness, but the perusal of the damage report does not reveal so. Further, PW1 Lal Chand has stated that he looked after the work in the Saw Mill and it is admitted that his father is a Forst Ranger. Though he stated that 42 slippers were brought in the vehicle by the

respondents on 23.2.1994 and the timber was unloaded there, but they assured to produce the permit later. He has admitted that Kamalu respondent neither came to him nor he had seen on that day. If that being so, then how the signatures of Kamlu were taken on the damage report. Even in the cross-examination, he had contradicted himself that he did not know who had unloaded the timber from the truck. He has stated that it was TD timber having hammer thereon. This fact was also admitted by the Investigating Officer PW8 Dev Raj. In the tail-end of his cross-examination he further contradicted his own version that the timber was brought by Vikram Singh only. PW2 Vidya Singh has also stated that he was granted TD timber for one tree of RAI and had given one tree to Vikram Singh respondent from Banoli Forest. PW5 Balbir Singh, Forest Guard has also stated that the timber in question were having the permit, which was having the hammer mark. PW6 Charan Dass has admitted that he was the owner of Saw-Mill, but did not support the case of the prosecution.

On the scrutiny of the entire evidence, it is manifest that there is no iota of evidence that the respondent has in fact transported the timber from one revenue estate to another revenue estate, without any permit, more specifically when Man Dass and Vikram Singh are local residents and stated to be the right holders. It is not the case of the prosecution that it was a theft property and even it is not proved by leading a cogent evidence from which place this timber was exported. The respondents were accused merely on the statements of PW1 Lal Chand, who has been looking after the Saw Mill, where, the timber was found. It has come in the

evidence that the Saw Mill is owned by the wife of Forest Ranger and the Forest Ranger is the father of Lal Chand aforesaid. It appears that the Forest Officers as well as police Investigating Agency had tried to shield the real offenders and the learned trial court has rightly held that the entire case appears to have been made to shield the wife of the Forest Ranger, who is the owner of the saw mill or to save their relations. Thus, truth did not surface. The respondents cannot be convicted on this evidence. The reasoning given for acquittal of the respondents by the learned trial court is made out from the evidence on record and no perversity is found therein. Accordingly, the appeal is dismissed.

The respondents are discharged of their bail bonds entered upon by them at any stage during of these proceedings.

July 31st, 2007.  
(PDS)

**(Surinder Singh)**  
**Judge.**