

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

**Cr.M.P.(M) No.864 of 2007**

**Decided on: December 29, 2007.**

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***State of Himachal Pradesh***

***...Petitioner.***

**VERSUS**

***Kuldeep Bhandari***

***....Respondent.***

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***Coram***

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

***Whether approved for reporting?<sup>1</sup> No***

**For the Petitioner : Mr.M.L.Chauhan, Addl.A.G.**

**For the respondent :**

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**Kuldip Singh, Judge (Oral)**

The State has filed this petition seeking leave to file appeal against the judgment dated 31.8.2007 passed by learned Chief Judicial Magistrate, Shimla in Criminal case No.20/2 of 2007/2006 acquitting the respondent under Section 279 I.P.C. and Section 181 of the Motor Vehicles Act, 1988.

**2.** The prosecution case, in brief, is that on 23.3.2006 at about 4.45 P.M. the respondent was riding scooter No.HP-06-3425 with PW-4 Akhil Rana as pillion rider. The respondent was driving the scooter in rash or negligent manner and as a result of his rash or negligent driving he struck against Tempo Trax No.HP-01A-2327 on National Highway - 22 near *Sarswati Vidhya Mandir School, Vikas Nagar*. PW-1 Rajesh Negi was driving Tempo Trax. On account of the accident, respondent and pillion rider sustained injuries. On the

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

statement of complainant Ext.PW-1/A F.I.R. Ext.PW-8/A came to be registered. After conclusion of the investigation, challan was put against the respondent, notice of accusation under Section 279 IPC and under Section 181 of the Motor Vehicles Act, 1988 was put to him, he pleaded not guilty and claimed trial. The prosecution examined eight witnesses, the statement of respondent was recorded under Section 313 Cr.P.C. but respondent did not lead any evidence in defence. The learned Chief Judicial Magistrate acquitted the respondent. Hence, this application by the State.

**3.** Heard and perused the record. PW-1 Rajesh Negi, PW-2 Leela Negi - mother of PW-1, PW-3 Arun Negi – brother of PW-1, who were in the Tempo Trax, supported the prosecution case but their statements require close scrutiny as they belong to one family. PW-4 Akhil Rana, pillion rider on the scooter, has stated that as soon as the scooter took pass Tempo Trax came from the opposite side but there was sufficient space for the Tempo Trax to cross but in confusion Tempo Trax struck against the scooter and due to accident he and scooter rider sustained injuries. He has stated that nobody was at fault for the accident. He did not support the prosecution and was declared hostile, in cross examination he has not supported the prosecution, in further cross examination conducted on behalf of respondent he has stated that Tempo Trax was being driven on the wrong side. PW-5 Rajesh Thakur reached the place of accident after the accident, therefore, his statement is of no help to the prosecution. PW-6 Rajinder Singh proved mechanical reports of Tempo Trax and the scooter involved in the accident. PW-7 Pankaj Kumar has shown

his inability to point out as to which driver was at fault for causing the accident. He was declared hostile. In cross examination, on behalf of the respondent he has stated that he was not on the spot at the time of accident. PW-8 Manoj Kumar is the Investigating Officer.

**4.** The learned Chief Judicial Magistrate has recorded a finding that as per evidence there was a bus on the spot but no effort was made to examine the driver, conductor or any other passenger of the said bus in support of the prosecution case. They were the most material witnesses. He has also recorded a finding that PW-1, PW-2 and PW-3 are interested witnesses and it is not safe to believe them. No effort was made to examine the owner of the scooter who entrusted the scooter to the respondent. He has recorded a finding that in the circumstances of the case it cannot be said that the scooter was being driven by the respondent without any valid licence. The learned Chief Judicial Magistrate has properly examined the evidence and has recorded acquittal of the respondent. No case has been made out for grant of leave to file appeal against the impugned judgment. Hence, leave to appeal refused and the petition is rejected.

**December 29, 2007**  
(soni)

**( Kuldip Singh ), J.**