IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 348 of 2001

Date of decision: 31.03.2008

State of Himachal Pradesh ... Appellant

Versus

Kehar Singh … Respondent

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. J.S. Guleria, Law Officer.

For the respondent: Mr. Ajay Sharma, Advocate.

V.K. Ahuja , J.:

This is an appeal filed by the State of H.P. against the judgment of the Court of learned Judicial Magistrate Ist Class, Bilaspur, dated 24.11.2000, vide which the respondent was acquitted of the accusation put up to him under Section 279 I.P.C. read with Section 184 of the Motor Vehicles Act.

Briefly stated the facts of the case are that on 24.5.1997 a report was lodged with the police by one Anup that today he was coming from Shimla to Mandi driving a Tata Sumo accompanied by the owner of the vehicle, namely, Rajesh. When they reached near Mangrot More, at about 5.30P.M., a truck came from Ghagas side at fast speed and on seeing the truck, the complainant stopped his jeep in his own side.

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

However, the truck driver who was coming at fast speed struck his truck with the jeep of the complainant which was thrown 20 feet ahead. The driver and conductor ran away from the spot and the jeep of the complainant was damaged, but no injuries were sustained by him or the other occupant. On this report, a case was registered and after investigation, the challan was filed as against the respondent. The respondent was tried as detailed above leading to his acquittal.

I have heard Mr. J.S. Guleria, Law Officer, for the appellant and Mr. Ajay Sharma, counsel for the respondent.

A perusal of the record of the case shows that two eye witnesses were examined by the prosecution, namely, complainant PW-1 Anup and PW-2 Rajesh, owner of the Tata Sumo. Both the witnesses have nowhere stated that at the relevant time the accused was driving the truck involved in the accident since it is their evidence that the truck driver ran away from the spot. There is no other eye witness by the prosecution to prove as to who was driving the vehicle at the time of the accident. In a criminal case no presumption can be proved that the accused was driving the vehicle at the relevant time and this fact has to be established by the direct evidence that the accused was the driver at the relevant time when the vehicle met with an accident. Once the identity of the accused was established, the next question to be determined was in regard to the rash or negligent act of the accused. But once there is no evidence to establish the identity of the person who was driving the vehicle at the relevant time, no findings of guilt can be recorded as against the accused on the basis of the presumption only that he may be driving the

vehicle at the relevant time. In the absence of identity of the respondent having been established, the findings recorded by the learned trial Court acquitting the respondent cannot be said to be perverse calling for an interference from this Court.

In view of the above discussion, it follows that there is no merit in the appeal filed by the appellant, which is dismissed accordingly. Bail bonds furnished by the respondent are discharged.

(V.K. Ahuja)
Judge

March 31, 2008
(BSS)