IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.97 of 2011

Date of Decision22.08.2026

Rajesh Kumar ……Appellant

Versus

State of Himachal Pradesh … Respondent

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1]

For the Appellant: Ms. Sheetal Vyas and Ms. Tejasvi Thakur, Advocates.

For the Respondent: Mr. Rajan Kahol, Additional Advocate General.

Sandeep Sharma, Judge(oral):

Instant Criminal Appeal filed under Section 374(II) of the Code of Criminal Procedure, lays challenge to judgment 29th March, 2011, passed by learned Additional Sessions Judge, Mandi, District Mandi, Himachal Pradesh, in Criminal Appeal No. 19-X/2010, reversing judgment of acquittal dated 18.12.2009, passed by learned Sub-Divisional Judicial Magistrate, Chachiot at Gohar, District Mandi, Himachal Pradesh in Police Challan No. 291-I/2004 / 51-II/2004 titled ***State of Himachal Pradesh vs. Rajesh Kumar and others*****,** whereby learned trial Court acquitted all the accused for their having allegedly committed offences punishable under Sections 41, 42 of the Indian

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

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Forest Act and under Sections 120-B and 379 read with Section 34 of IPC.

2. Precisely, the case of the prosecution, as emerge from the record made available to this Court, reveals that Head Constable Ram Lal (PW-11), Constable Narpat, Constable Dhandev (PW-3), and Constable Kuldeep Singh, who on 16.01.2004, at the relevant time were present near Kanda Link Road in an official vehicle bearing registration No. HP-33-3374 being driven by Ramesh Kumar, intercepted one Mahindra Pick-up coming from Kullu at 5:30 AM. Since driver of the vehicle reversed the vehicle and attempted to run away, police officials ran after the vehicle and managed to apprehend the driver of the vehicle, namely Rajesh Kumar, whereas two occupants of the vehicle, namely Ajay Kumar and Anil Kumar, whose names subsequently came to be disclosed by Rajesh Kumar, managed to run away. Rajesh Kumar produced documents of the vehicle and same was found to be registered in the name of Gopal Krishan (PW-6). Rajesh Kumar, who was driving the offending vehicle, also produced his driving licence. The vehicle was covered with blue-coloured tarpaulin, but before effecting search of the same, police called independent witness, namely Nota Ram (PW-13), and in his presence, tarpaulin was removed and vehicle was found to be containing 53 scants of different sizes. Though, permit and licence

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were demanded from the accused Rajesh Kumar for transporting the timber, but he failed to produce the same. Since timber appeared to be stolen property, police party seized the same vide seizure memo Ex.PW-8/A and thereafter, ruqua Ex. PW-11/A was prepared and sent to the police station through Constable Kuldeep Singh. On the basis of aforesaid *ruqua*, FIR Ex. PW-11/B was registered at Police Station Gohar, District Mandi, Himachal Pradesh.

3. PW-11, HC Ram Lal, who conducted the investigation, prepared site plan Ex. PW-11/D. BO Suresh Kumar and Forest Guard Hem Raj (PW4) were called telephonically, and they put seizure hammer mark on the timber. Suresh Kumar measured the timber and estimated its value at Rs. 76,200/-. He issued the detail, Ex. PW-1/A. An application, Ex. PW-11/F was filed before the Authorized Officer for initiating proceedings against the owner. The vehicle, timber, tarpaulin, and rope were handed over to Padam Singh (PW-2) on *sapurdari* vide memo Ex. PW-2/A. One scant was retained as sample. Police, after having arrested the accused, interrogated them. They allegedly showed the place from where the timber was loaded by them in the vehicle. Memo Ex. PW-5/A was prepared. Site plan Ex. PW-11/H of that place was also prepared. Further investigation was conducted by ASI Mohan Lal, who arrested accused Om Dutt, who made a disclosure statement that he could show the place where he

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had sold 53 scants to Ajay Kumar and Sushil Kumar and where they had loaded the timber into the vehicle. Accused showed the place and memo Ex. PW-7/B was prepared. Site plan Ex. PW-7/A was also prepared. Permit Ex. PW-12/A was produced by Dila Ram, which was seized vide seizure memo Ex. PW-10/A. After completion of the investigation, police presented the challan in the competent Court of Law.

4. Learned Trial Court charged the accused Rajesh Kumar (appellant herein), Sushil Kumar alias Anil Kumar and Ajay Kumar alias Mintu for the commission of offences punishable under Section 120-B of IPC and under Sections 41 & 42 of the Indian Forest Act, whereas accused Om Dutt alias Om Chand and Dur Singh alias Dor Singh were charged for the commission of offences punishable under Sections 120-B and 379 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

5. Prosecution, with a view to prove its case, examined 13 witnesses, whereas accused in their statements recorded under Section 313 Cr.P.C., denied the prosecution case in its entirety and claimed themselves to be innocent. Accused Rajesh Kumar (appellant herein), stated that police had taken his driving licence in possession at the police station. However, no defence was sought to be adduced by them.

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6. On the basis of the evidence adduced on record by the prosecution, learned Trial Court held accused not guilty of their having committed the offences punishable under the aforesaid provisions of law and accordingly acquitted them.

7. Being aggrieved and dissatisfied with the aforesaid judgment of acquittal recorded by learned Trial Court, respondent-State preferred an appeal in the Court of learned Additional Sessions Judge, Mandi, which came to be partly allowed vide judgment dated 29.03.2011. Learned Additional Sessions Judge, Mandi though did not interfere with the judgment of acquittal recorded by learned Court below in favour of accused Ajay Kumar, Sushil Kumar, Om Dutt, and Dur Singh, but held present appellant-accused Rajesh Kumar, driver of the offending vehicle, guilty of his having committed offences punishable under Sections 41 & 42 of the Indian Forest Act and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of six months and pay fine of Rs. 5,000/-, and in default of payment of fine, to further undergo simple imprisonment for three months. In the aforesaid background, appellant-accused Rajesh Kumar has approached this Court by way of the instant appeal, praying therein for his acquittal after setting aside the judgment of conviction and order of sentence recorded by the learned Additional Sessions Judge, Mandi.

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8. I have heard learned counsel representing the parties and gone through the record carefully.

9. Precisely, the grouse of the appellant-accused, as has been highlighted in the grounds of appeal and further canvassed by Ms. Sheetal Vyas, learned First Appeal Counsel representing the appellant-accused, is that learned Court has fallen into grave error while convicting the appellant-accused under Sections 41 and 42 of the Indian Forest Act, for the reason that timber, which was allegedly found in the offending vehicle being driven by the appellant-accused, was attempted to be shown as stolen property and as such, a case under Section 379 of IPC was registered against co-accused Om Dutt and Dor Singh, but since prosecution was unable to prove the theft, learned trial Court acquitted both Om Dutt and Dor Singh, which finding further came to be upheld by learned Additional Sessions Judge, Mandi. Ms. Vyas, learned counsel appearing for the appellant, submitted that since prosecution failed to prove theft of timber, coupled with the fact that no complaint, whatsoever, was made by the grandmother of Dor Singh, whose timber was alleged to be stolen, appellant-accused herein could not have been convicted under Sections 41 and 42 of the Indian Forest Act. Ms. Vyas further argued that none of the prosecution witnesses supported the case of the prosecution to the effect that at the time of recovery of timber from the

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offending vehicle, appellant-accused was present on the spot. She submitted that PW-13, Nota Ram, who was allegedly called by the police to the spot after interception of the vehicle concerned, nowhere supported the case of the prosecution, rather he specifically denied that timber scants were found in the offending vehicle and at the relevant time appellant-accused was present there. She further submitted that besides aforesaid independent witness, PW-13, Nota Ram, two official witnesses, which were called by the police to prove recovery, also did not support the prosecution case. In that regard, she made specific reference to the statements made by PW-1, Suresh Kumar and PW-4, Hem Raj, who, though admitted factum of their having measured the wood and affixing the hammer mark, but nowhere stated that appellant-accused was present on the spot at the time of recovery. She also referred to the statement of PW-5, in whose presence spot was demarcated, who also did not support the case of the prosecution.

10. While supporting the impugned judgment of conviction recorded by learned Additional Sessions Judge, Mandi, Mr. Rajan Kahol, learned Additional Advocate General, submitted that there is no illegality or infirmity in the same and as such, no interference is called for. He submitted that true it is that co-accused Om Dutt and Dor Singh stand acquitted of the charges framed against them under

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Section 379 of IPC, but once it is not in dispute, rather stands duly proved beyond reasonable doubt that 53 scants of timber were recovered from the vehicle being driven by the appellant-accused, who was also apprehended on the spot, no illegality can be said to have been committed by learned Additional Sessions Judge, Mandi in holding him guilty under Sections 41 and 42 of the Indian Forest Act. He submitted that though PW-13, Nota Ram, PW-1, Suresh Kumar, and PW-4, Hem Raj have not supported the case of the prosecution, yet there is overwhelming evidence adduced on record by the prosecution to prove the presence of the appellant-accused at the time of recovery of timber. He submitted that since PW-6, Gopal Krishan, owner of the vehicle, categorically admitted factum of his having engaged present appellant-accused as driver of the vehicle from which 53 scants of Deodar were recovered, coupled with the fact that all the official witnesses, who had intercepted the vehicle, namely PW-8 Narpat Ram and PW-11, HC Ram Lal, categorically stated that appellant-accused, Rajesh Kumar, was apprehended on the spot, learned Additional Sessions Judge, Mandi, rightly interfered with the judgment of acquittal recorded by learned Sub-Divisional Judicial Magistrate, Chachiot at Gohar. Lastly, learned Additional Advocate General submitted that once appellant-accused was unable to produce any valid permit or transit pass, he was rightly booked under

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Sections 41 and 42 of the Indian Forest Act, which clearly provides that no person shall transport or cause to be transported any forest timber except firewood, pulpwood, and bamboos without a valid transit pass and proper property/hammer marks affixed by the authorized Forest Officer, and in violation of Rule 11(1) of the Forest Produce Transit Rules.

11. Having heard learned counsel representing the parties and perused the material adduced on record, this Court finds that in nutshell case of the prosecution, as came to be projected before the learned trial Court was that TD (Timber Distribution) Permit, Ex. PW-12/G was sanctioned in the name of Smt. Ramkali, grandmother of accused Dor Singh, for the purpose of repair of house. Wood was cut in pursuance of the said permit and scants were prepared. Prosecution has alleged that accused Dor Singh, after having stolen 27 scants, handed over the same to accused Om Dutt, who further sold the same alongwith other scants (in total 53 scants) to accused Rajesh Kumar, Sushil Kumar and Ajay Kumar. The said scants were sold and loaded at about 2:00 AM during the intervening night of 15/16.01.2004, at about 200 meters from Village Laghat Thana. Accused Rajesh Kumar i.e. appellant herein, Ajay Kumar, and Sushil Kumar after purchasing 53 scants were transporting the same in Mahindra Pick-up bearing registration No. HP-23A-1560. However,

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when they were stopped by the police at Kandha Link Road near Pandoh Dam, appellant-accused Rajesh Kumar reversed the vehicle and stopped it at a distance of about 50 meters. Accused Ajay Kumar and Sushil Kumar managed to run away taking benefit of darkness, whereas appellant-accused Rajesh Kumar was apprehended at the spot by the police. As per case of the prosecution they called independent witness Nota Ram on the spot in whose presence blue coloured tarpaulin was removed and vehicle was checked, wherein 53 scants of Deodar wood were found to be stacked. Since appellant-accused Rajesh Kumar failed to show any permit or document for possessing and transporting afore said scants, which were found without any T.D. hammer, police arrived at a conclusion that scants were stolen and being transported by the accused persons in pursuance of criminal conspiracy hatched by them. Since appellant accused allegedly disclosed that accused Ajay Kumar and Sushil Kumar were also with him and it also emerged in the investigation that timber recovered from the vehicle was actually purchased from Om Dutt @ Om Chand and Dur Singh, police after having conducted the investigation, presented the challan in the competent court of law under Section 120-B IPC and for violation of provisions of Rule 11 punishable under Rule 20 of the H.P. Forest Produce Transit (Land Routes) Rules, 1978, framed charge under

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Sections 41 and 42 of the Indian Forest Act against accused Rajesh Kumar, Ajay Kumar and Susheel Kumar, whereas accused Om Datt alias Om Chand and Dur Singh were charged under Sections 120-B and 379 read with Section 34 of IPC.

12. Admittedly, in the case at hand, source of the wood, which was allegedly recovered from the vehicle being driven by appellant-accused, was the sale allegedly made by co-accused Dur Singh to co-accused Om Datt, who allegedly further sold the same to co-accused Ajay Kumar and Sushil Kumar. Though, prosecution attempted to prove that stolen timber was being transported in the vehicle being driven by the appellant-accused, but it is not in dispute, rather stands admitted that prosecution was unable to prove the charge of theft against accused Om Chand and Dur Singh, as a result thereof, both the above persons were acquitted of the charges framed against them. Since accused Ajay Kumar and Sushil Kumar allegedly had managed to run away from the spot and their presence alongwith the offending vehicle could not be established, they were also acquitted under Sections 41 and 42 of the Act.

13. Interestingly, in the case at hand, prosecution also attempted to prove criminal conspiracy *inter se* all the accused, however, same could not be proved in accordance with law and as such, all the accused, named in the FIR, were also acquitted of the

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aforesaid charge framed under Section 120-B IPC. It is also not in dispute that learned Additional Sessions Judge, Mandi, while considering the appeal filed by the State against the acquittal of accused Om Datt, Dur Singh, Ajay Kumar, Sushil Kumar and present appellant-accused, acquitted all the accused, save and except the appellant-accused. However, such findings never came to be challenged in appropriate proceedings by the respondent-State, meaning thereby respondent-State accepted the acquittal of accused Om Chand, Dur Singh, Ajay Kumar and Sushil Kumar, who had allegedly committed offences punishable under Sections 379 and 120-B IPC and Sections 41 and 42 of the Indian Forest Act.

14. Having taken note of the fact that case of the prosecution that wood stolen by co-accused Dur Singh was further sold to accused Om Dutt was not proved and aforesaid accused, who had allegedly indulged in the sale and purchase of stolen property stand acquitted and such finding was further upheld by learned Additional Sessions Judge, this Court is persuaded to agree with the learned counsel for the appellant-accused that there was no occasion, if any, to reverse the finding of acquittal recorded by learned trial Court in favour of the appellant-accused.

15. It is important to take note of the fact that as per the prosecution’s own case, a TD Ex. PW1/2/G was sanctioned in the

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name of Smt. Ramkali, grandmother of accused Dor Singh for the purpose of repair of house and aforesaid person, after having cut wood prepared scants, which were allegedly stolen by Dor Singh and he further sold the same to accused Om Dutt. As per case of the prosecution, Om Dutt further sold the said scants alongwith other scants, in total 53 scants, to accused Rajesh Kumar, Sushil Kumar and Ajay Kumar. Interestingly, in the case at hand, this Court was unable to find out any recovery memo, if any, qua 26 scants, which were found in the vehicle in addition to 23 scants allegedly sold by Om Dutt.

16. Accused set up a defence that they were never present on the spot and police officials found an empty Tata Pickup HP-23-A-1560 parked on the roadside and they have planted the whole case.

17. Prosecution, with a view to prove its case, examined LHC Narpat Ram (PW-8) and HC Ram Lal (PW-11), who supported the case of the prosecution. But if the statements of the independent witnesses of the spot, in whose presence the vehicle was allegedly checked, are perused, this Court is persuaded to agree with Ms. Sheetal Vyas, Advocate that they have not supported the case of the prosecution. Independent witness PW-13, Nota Ram, while stating that incident happened about seven years ago, deposed that he does not remember the exact date of the incident, but when he arrived at

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his tea shop in the morning, he found that police officials had kept some wood near his shop. He further deposed that no other person or vehicle was present on the spot. He further stated that none of the accused persons were present on the spot. Aforesaid witness was declared hostile. Cross-examination conducted by learned APP of the aforesaid witness suggests that nothing material could be extracted from him. He denied that accused persons had opened the tarpaulin (*tirpal*) of the offending pickup vehicle and found that it contained Deodar scants. He reiterated that scants were kept on the ground. Cross-examination conducted upon aforesaid witness clearly reveals that he denied prosecution story in totality. Though, this witness admitted his signature on Memo Ext. PW-8/A under red circle 'B', but stated that he normally does not sign on blank papers, but he had signed in the present case upon being asked to do so by the police personnel. If the version put forth by aforesaid witness is perused in its entirety, he nowhere supported the case of the prosecution, rather supported the claim of the accused that no recovery was effected from the vehicle which, at the relevant time, was parked on the spot of occurrence.

18. PW-1, Suresh Kumar and PW-4, Hem Raj, who were summoned by the police to the spot, have also not supported the case of the prosecution. PW-1, in his examination-in-chief, deposed

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that in the year 2003, he was working as Block Forest Officer (Deputy Ranger) and on 16.01.2004, CIA Staff, Mandi called him near Pandoh at Kandha Link Road and he had reached the spot at 7:15 AM. He further deposed that at the spot, police officials had apprehended a Mahindra Jeep bearing registration No. HP-23-A-1560 containing Deodar scants. He stated that he took the scants out of the vehicle and measured them and found out that there are 53 scants in total and his report qua the same is Ex. PW-1/A. He deposed that Beat Guard Saroa, Shri Hem Raj (PW-4), affixed the hammer mark impression "NS-22" on the scants and out of those, one scant (Ex.P-1) was seized by the police and which is shown to him in the Court. In his cross-examination, this witness admitted that he was telephonically informed and called by the CIA Staff. He stated that his residence is 10 km from the spot, whereas the residence of the Block Officer, Pandoh, is only 1 km from the spot. He further stated that the residence of Forest Guard, Hem Raj is around 4 km from the spot. Most importantly, this witness stated that he cannot say that whether any of the accused persons at that time were present at the spot or not. Aforesaid version of him fully corroborates the testimony put forth by PW-13, who specifically denied the presence of any of the accused persons at the time of alleged recovery or measurement of the timber.

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19. PW-4, Forest Guard, Hem Raj, while supporting the version of PW-1 that on 16.01.2004, he along with PW-4 i.e. Hem Raj had gone to the spot, deposed that one Mahindra Pick-up bearing registration No. HP-23-A-1560 containing 53 scants of timber without any hammer marks was found. He deposed that he affixed the hammer mark impression (sample whereof is Ex. PW-4/A) on each scant, and out of those scant one scant (Ex. P-1) was retained by the police. In his cross-examination, this witness also admitted that he had arrived at the spot on a scooter and on the spot many persons were standing beside the police officials. He nowhere specifically stated that accused Rajesh Kumar was present on the spot. None of the independent witnesses or forest officials of the spot has linked the identity of accused Rajesh Kumar with the recovery of scants in Mahindra Pick-up No. HP-23-A-1560.

20. Though, at this stage, learned Additional Advocate General specifically referred to the statement made by PW-11, Head Constable Ram Lal, but version put forth by this witness if read in its entirety, clearly suggests that he also not supported the case of the prosecution. He stated that he does not remember whether 53 scants of timber were unloaded from the vehicle after arrival of PW-1 and PW-4 or before their arrival. Similarly, PW-11 stated that timber was unloaded by police officials, which version of his in contradiction to the

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version put forth by PW-1, who stated that he after his having unloaded the timber, measured the same. Moreover, afore witness nowhere narrated the names of the person, who allegedly unloaded the timber.

21. In the case at hand, an attempt came to be made by the prosecution to link the appellant-accused with the recovery of the scants because on the basis of the same further investigation came to be carried out. Allegedly, appellant-accused revealed that co-accused Ajay Kumar and Susheel Kumar were with him. After arrest of accused Ajay Kumar and Sushil Kumar, police came to be know that they had purchased the scants from accused Om Dutt and loaded the same from the spot shown by spot map Ex. PW-11/H, but as has been observed hereinabove, once prosecution has not been able to prove theft of the timber in question, coupled with the fact that there is no recovery memo qua the remaining 26 scants, it is not understood how appellant/accused, whose presence is doubtful on the spot, could have been convicted for his having committed offences punishable under Sections 41 and 42 of the Act.

22. No doubt, timber allegedly recovered from the offending vehicle was being transported without there being any permit, but once defence has been able to set up a case that no timber was being transported, rather vehicle from where timber came to be

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recovered was parked alongside the road, appellant/accused could not have been convicted under Sections 41 and 42 of the Act for his having not produced valid permit.

23. Moreover, this Court finds that TD permit, Ex. PW-12/G stood sanctioned in the name of Smt. Ramkali, grandmother of accused Dur Singh, for the purpose of repair of the house. Since, qua wood out of which 23 scants were converted, TD permit, Ex. PW-12/G stood sanctioned in favour of Smt. Ramkali, who otherwise never lodged any complaint with regard to theft, it is not understood how the prosecution attempted to set up a case that timber was being transported without any permit. It is not the case of the prosecution that timber was being transported from one revenue estate to another revenue estate without permit**.** Moreover, PW-5 Rajeev Kumar, who allegedly conducted the demarcation of the spot from where timber was loaded, has not supported the case of the prosecution.

24. Though, in the case at hand, police has been able to show the source of 27 scants, which was allegedly stolen by Dur Singh and further sold to Om Dutt, but there is no evidence on record qua remaining 26 scants, which were found in addition to 23 scants in the offending vehicle.

25. Consequently, in view of the detailed discussion made hereinabove, this Court finds merit in the present appeal and

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accordingly, same is allowed. The Judgment of conviction and order of sentence dated 29.03.2011 passed by learned Additional Sessions Judge, Mandi, District Mandi, Himachal Pradesh, is quashed and set-aside and judgment of acquittal recorded by learned trial Court is upheld. The appellant-accused is acquitted of the charges framed against him. Bail bond, if any furnished by the appellant-accused are hereby discharged. Record of learned Court below be sent back forthwith. Pending application (s), if any, also stand disposed of.

(Sandeep Sharma),
Judge

August 22,2026
(shankar)

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