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**(2007) 07 SHI CK 0010**  
**In the High Court Of Himachal Pradesh**

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| State of Himachal Pradesh | Vs | APPELLANT  |
| Gurpal Ram and Others     |    | RESPONDENT |

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**Date of Decision :** 20-07-2007

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161

**Citation :** (2007) CriLJ 4732

**Hon'ble Judges :** Surinder Singh, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Surinder Singh, J.—This appeal filed by the State against the acquittal of the respondents in Criminal Case No. 20-III of 1994, decided on 2nd June, 1998, by Judicial Magistrate 1st Class, Rohru.

2. The factual matrix of the case is that during the intervening night of 29th/30th April, 1994, P.W. & S.I. Abdul Hamid was on patrolling duty in Rohru Bazar. Dy. Superintendent of Police K.S. Guleria was on the checking duty, along with some police officials in his Gypsy. Abdul Hamid (S.I.) spotted a Tempo No. PB-08-J-9825 coming from meat market towards upp&r market Rohru, which was being driven by Gurpal Ram, respondent arid the other respondents were the occupants thereof. On checking, it was found having seven Karian (rafters) and three planks of Deodar of different sizes. The respondents failed to produce any permit, as such, the aforesaid case property was seized and taken into possession vide recovery memo Ext. PW2/A along with the documents of the vehicle vide memo Ext. PW2/B. The rukka Ext. PW2/A was sent for registration of the case, on the basis of which FIR Ext. PW2/B. was registered. Case property was given on supurdari to Kalyan Singh, Range Officer vide memo Ext. PW1/A. The police had also prepared site plan Ext. PW7/ C. After recording statements of the witnesses u/s 161 of the Code of Criminal Procedure, the case under Sections 41 and 42 of the Indian Forest Act was put up in the Court after completing the investigation.

3. Finding a prima facie case under the aforesaid sections, the respondents were accordingly charge-sheeted. However, they pleaded not guilty and claimed trial.

4. To prove its case, prosecution examined P.W. 1 Kalyan Singh, Range Officer, P.W. 2 LHC Mohan Lai, P.W. 3 Dharam Sain P.W. 4 Shyam Lai, P.W. 5 Dy. S.P. K.S. Guleria, P.W. 6 M. Section Parmar, S.I. Abdul Hamir (P.W. 7) and HC Om Parkash, P.W. 8. The respondents were also examined u/s 313 of the Code of Criminal Procedure. Respondent Gurpal Ram, driver set out the defence that the timber was in the shape of rafters, taken from old dismantled house of the respondent Parmod Kumar, to give the support to the cows loaded in the tempo, whereas, the defence of the other respondents was denial simpliciter. No defence evidence was led.

5. After hearing the learned Counsel for the parties and upon going through the record, the learned trial Court had acquitted the respondents, which has been challenged in the instant appeal, on the ground that the prosecution evidence was not properly considered and much importance was given to the minor contradictions.

6. The leave to appeal was granted on 9-5-2000 by this Court. Now the matter has been finally heard.

7. Mr. Ashutosh Burathoki, learned Additional Advocate General, has vehemently argued that the case of the prosecution stood proved on the evidence on record and the learned trial Court has passed the impugned judgment on conjecture and surmises.

8. Contra, Shri Virender Rathore, learned Counsel for the respondents while supporting the impugned judgment has argued that the prosecution has failed to prove that the respondents were transporting the seven rafters and three planks from one revenue estate to another revenue estate or out of the Forest Division in order to bring their case within the mischief of offences charged.

9. I have considered the rival contentions of the parties and have reappraised the evidence on record.

10. P.W. 2 LHC Mohan Lal has admitted that the respondent Parmod Kumar has a house at Rohru and he also runs a shop. He as well as P.W. 1 Kalyan Singh, Range Officer has admitted that the timber which was recovered were quite old. This fact has also been admitted by P.W. 7 S.I. Abdul Hamid. He has further admitted the case of the respondents that two cows were also loaded in the tempo and the case of the respondents has been that the cows were being transported and the rafters and plants were put to give support. These were taken from the dismantled building of respondent Parmod Kumar. However, P.W. 7 aforesaid has admitted that the said timber was smeared with cow dung. P.W. 3 Dharam Sain, an independent witness was also examined. According to him, the tempo was being engaged for transporting the cows, purchased from Rohru, by respondent Parmod Kumar to village Gouna. Though, he was declared hostile

by the prosecution, but his testimony cannot be thrown out on this very score. The story put forth by the respondents-accused has been probalised by him and further he has admitted that Parmod Kumar aforesaid had dismantled his old house. According to Dy. S.P. K.S. Guleria, the respondents could not produce the permit, but on the scrutiny of the prosecution evidence, it transpires that the respondents were apprehended in Rohru Bazar, while carrying the timber which were brought by them from meat market Rohru I itself. Since both the meat market and Rohru Bazar where the alleged timber was caught is within the same Forest Division, thus, no permit was required under the Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978. Even there is not even an iota of evidence to show that the timber in question was being transported from one revenue estate to another revenue estate, in absence of which the violation of Sections 41 and 42 of the Indian Forest Act read with Rule 11 of the rules aforesaid is not made out. The defence is probalised and after analyzing the submissions made by the learned Counsel for the parties, in my considered opinion, the explanation given by the respondent is quite satisfactory, convincing and honest, which is further strengthened in view of the statements of the official witnesses, discussed above. Accordingly, I find no merit in the appeal and the same is dismissed.

11. The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged.

12. The matter is disposed of accordingly.