

(1973) 07 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 30 of 1972

State of Himachal Pradesh

APPELLANT

Vs

Shri Suresh Chand

RESPONDENT

Date of Decision : 23-07-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439, 439(6)
Motor Vehicles Act, 1988 — Section 116, 131

Citation : (1973) 2 ILR HP 809

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : B. Sita Ram, General, for the Appellant; O.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This is a revision filed by the State against the order dated 24th November, 1971 of the Sub-Divisional Magistrate, Theog, whereby he has convicted the accused Suresh Chand u/s 116 of the Motor Vehicles Act and has sentenced him to pay a fine of Rs. 10. The only ground upon which the petition has been filed is that the sentence awarded by the learned trial Magistrate is rather inadequate and the offence, according to State, being of a serious nature, should have been punished in a more effective manner. It is stated, that as provided in Section 116 of the Motor Vehicles Act, upon first conviction the sentence can extend upto six months imprisonment with a fine of Rs. 500. It is submitted by the State that the accused had admitted his guilt and was found driving his vehicle in a reckless manner and as such some exemplary and deterrent punishment should have been awarded.

2. The learned Counsel for the Respondent-accused contended in the foremost that the State having filed a revision for enhancement of sentence u/s 439 of the Code of Criminal Procedure, has enabled the accused to plead against his very conviction, what to say of showing to the Court that the sentence awarded was

sufficient. The learned Counsel relied upon Sub-section (6) of Section 439 of the Code of Criminal Procedure. It is manifest, under this provision the accused is entitled to show that his very conviction was defective and that he should have been acquitted of the offence, rather than having been convicted of the same. The learned Counsel relied upon Section 131 of the Motor Vehicles Act which lays down very clearly, that no person has to be prosecuted for an offence punishable u/s 116, unless he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration and further that within 14 days from the commission of the offence a notice specifying the nature of the offence and the time and place of its commission is served upon him, and that within 28 days of the commission of the offence, a summons for the offence was also served on him.

3. I have perused the record of the trial Magistrate and I find that previous warning as required under Clause (a) of Section 131 was never administered upon the accused and that by itself was a fatal defect to the prosecution. It appears that on 19-6-1971 a report was submitted that the accused was driving recklessly and perhaps made some accident and on 24th November, 1971, the accused was produced and a plea of guilt was recorded. He was straightaway convicted and sentenced to pay a fine of Rs. 10, in default, to undergo simple imprisonment for one day. Besides this, there is no evidence on record to indicate that a notice or a summons as required under Clause (b) and (c) of Section 131 were "at all served upon the accused with in the prescribed time.

4. Although the finding of conviction has been recorded, yet, it appears, all the ingredients necessary to formulate the offence were not made out. It has been mentioned in the complaint that the accused was found driving recklessly and dangerously. Mere reckless and dangerous driving is in itself not punishable u/s 116. The speed of the vehicle, the manner of its driving and the danger to the public has to be determined, after taking into consideration other circumstances including the nature, condition and use of the place where the vehicle was driven of the amount of traffic which actually was at the time or which might reasonably have been expected to be at the place see: In Re: M. Ganesan, and Arjunsingh Vs. The State,

5. In this view of the matter, there is hardly any ground to substantiate the revision as the very conviction is of a doubtful nature, rather than making any order for enhancement of sentence.

6. The revision petition is without any substance Pradesh and is hereby rejected.