IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No.234 of 2012 with

Cr. Revision No.259 of 2012

Date of Decision : 25.04.2026

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1. Criminal Revision No.234 of 2012

Jeet Ram ….Petitioner

Versus

State of Himachal Pradesh …Respondent.

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2. Cr. Revision No.259 of 2012

Raj Kumar …. Petitioner

Versus

State of Himachal Pradesh ….. Respondent.

Coram:

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?[1]

For the Petitioner(s) : Mr. Ajay Sharma & Mr. Subash Sharma, Senior Advocates, with Mr. Tarun Bargta and Mr. Prantap Sharma, Advocates, for the petitioners in the respective petitions.

For the Respondent : Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, Judge (Oral)

Since common questions of law and facts are involved in both the petitions and petitioners ***(hereinafter referred to as the 'accused')*** in both the cases, are aggrieved of common judgment

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

dated 24.09.2012, passed by learned Sessions Judge, Una, District Una, Himachal Pradesh, affirming judgment of conviction and order of sentence dated 29.03.2010/31.03.2010, passed by learned Judicial Magistrate, First Class, Court No.II, Una, District Una, Himachal Pradesh, in criminal case No.106-I/1998, whereby learned trial Court, while holding petitioners-accused guilty of their having committed offences punishable under Sections 41 and 42 of the Indian Forest Act **(hereinafter referred to as the 'Act'),** convicted and sentenced them as under:-

Sr.	Offence	Sentence	Fine amount( )
1.	**41 & 42 of the Indian Forest Act**	**Simple imprisonment for a period of six months and in default of payment of fine to undergo simple imprisonment for on moth**	1000/-

2. Precisely, the case of the prosecution, as emerge from the record of learned Court below, is that a police party headed by Sh. Bimal Gupta, Dy.S.P., laid a nakka at village Jhalera on 23.06.1997, and at about 3.30 PM, a Tempo Tata 407 No. HIH 891, driven by accused Raj Kumar, coming from Amb side, was signalled to stop. Accused Jeet Ram was also sitting in the tempo alongwith accused Raj Kumar. Allegedly, on checking of afore tempo, 19 logs of Khair kept underneath a tarpaulin, were found. Since accused, named hereinabove, were unable to produce any permit qua transportation of the Khair logs, police, after having completed necessary codal formalities, lodged FIR Ex. PW-15/B against the petitioners-accused

as well as co-accused Vaheguru and Janak Singh. After completion of the investigation, police presented the challan in the competent Court of law, which being satisfied that a prima-facie case exists against the accused, named in the FIR, framed charges under Sections 41 and 42 of the Indian Forest Act and Section 379 read with Section 34 of IPC against them, to which they pleaded not guilty and claimed trial.

3. Prosecution, with a view to prove its case, examined as many as 17 witnesses, whereas the accused, in their statements recorded under Section 313 Cr.P.C., denied the case of the prosecution in toto and claimed themselves to be innocent. However, learned trial Court, on the basis of the evidence adduced on record by the prosecution, held petitioner-accused, namely Raj Kumar and Jeet Ram, guilty of their having committed the offences punishable under Sections 41 and 42 of the Indian Forest Act and accordingly, convicted and sentenced them, as per the description given hereinabove. However, learned trial Court acquitted other two accused, namely Vaheguru and Janak Singh.

4. Feeling aggrieved and dissatisfied with the judgment of conviction and order of sentence recorded by learned trial Court, present petitioners-accused filed an appeals under Section 374 of the Code of Criminal Procedure before the learned Sessions Judge, Una , District Una, Himachal Pradesh, but same were also dismissed vide common judgment dated 29.09.2012. In the aforesaid background, present petitioners-accused approached this Court by way of instant criminal revision petitions, praying therein for their acquittal after

quashing and setting-aside the impugned judgments passed by the learned Courts below.

5. At this stage, it is apt to take note of the fact that no appeal whatsoever came to be filed at the behest of the respondent-State qua acquittal of accused, namely Vaheguru and Janak Singh, as a result of which, judgment of acquittal recorded by learned trial Court has attained finality qua both the aforesaid persons.

6. Precisely, the grouse of the petitioners-accused, as has been highlighted in the grounds of petitions and further canvassed by Mr. Subhash Sharma and Mr. Ajay Sharma, learned Senior counsel, duly assisted by Mr. Prantap Sharma and Mr. Tarun Bargta, Advocate, representing the petitioners, is that learned Sessions Judge, Una, District Una, Himachal Pradesh, while upholding the judgment of conviction and order of sentence recorded by learned trial Court, failed to appreciate the evidence in its right perspective, as a result whereof findings to the detriment of the petitioners-accused. have come to the fore. Learned Senior counsel representing the petitioners-accused further argued that no cogent and convincing evidence ever came to be adduced on record by the prosecution to prove that 19 logs of khair wood were cut and illegally transported by the petitioners-accused, rather one of the witness, namely Smt. Shakuntla Devi (PW-6), in her statement recorded under Section 161 Cr.P.C, categorically disclosed to the police that a person, namely Vaheguru, owner of the offending vehicle, had asked the mother of accused Raj Kumar to transport the khair logs, as he had a permit to

do so. Learned Senior counsel further argued that though aforesaid witness, while making her deposition before the competent court of law, turned hostile, but her cross-examination, if read in its entirety, clearly establishes that petitioner-accused, Raj Kumar, remained under the impression throughout that accused Vaheguru had obtained permit for transporting 19 logs of khair wood.

7. Learned Senior counsel representing the petitioners-accused further argued that both the Courts below failed to take note of the fact that prosecution never produced khair logs as well as axe and saw allegedly used for cutting the khair wood before the Court, which omission is otherwise fatal to the case of the prosecution. They submitted that in order to prove guilt of the accused under Sections 41 and 42 of the Indian Forest Act, it was incumbent upon the prosecution to produce khair logs as well as axe and saw used for cutting the khair wood. They submitted that mere production of khair logs before the Range Forest Officer, Una at the time of proceedings under Sections 52 A(1) and 52 A(2) of the Indian Forest Act, is not sufficient to conclude the guilt of the accused under Sections 41 and 42 of the Indian Forest Act.

8. To support aforesaid contentions, learned counsel representing the petitioners-accused placed reliance upon the judgment passed by Co-ordinate Bench of this Court in case titled ***Madan Singh vs. State of Himachal Pra*desh,** passed in Cr. Revision No.11 of 2012, decided on 01.05.2025. While placing reliance upon the judgment passed by Hon'ble Apex Court in ***Pawan***

Kumar vs. State of Himachal Pradesh, (2019) 4 SCC 182, Co-ordinate Bench of this Court, in afore judgment, held that when the seized wood and vehicle were not produced and only one sample was produced, accused cannot be convicted of the commission of offence punishable under Section 379 of IPC and Section 42 of the Forest Act.

9. To the contrary, Mr. Anish Banshtu, learned Deputy Advocate General, while supporting the impugned judgment passed by learned Sessions Judge, Una, District Una, Himachal Pradesh, vehemently argued that bare perusal of the same clearly reveals that same is based upon proper appreciation of facts and law and as such, no interference is warranted. He submitted that though, at first instance, prosecution witness, namely Shakuntla Devi, in her statement recorded under Section 161 Cr.P.C., has stated that accused Vaheguru had asked mother of the accused Raj Kumar to drive his vehicle for one day for transporting the logs, for which he had obtained a permit, but since aforesaid witness failed to depose such facts in the Court, no illegality can be said to have been committed by the Courts below, while discarding her testimony. He further submitted that there is overwhelming evidence adduced on record by the prosecution suggestive of the fact that on the date of alleged incident, 19 logs of khair wood were being transported without any permit and since at the relevant time the vehicle in question was being driven by accused Raj Kumar and accused Jeet Ram was also sitting in the vehicle, they were rightly came to be booked under Sections 41 and

42 of the Indian Forest Act. He further submitted that there is evidence that stumps of two khair trees were found in nearby jungle from where accused had cut the khair wood and thereafter converted the same into logs. Lastly, learned Deputy Advocate General submitted that since PW-16, Sh. Bimal Gupta, had already produced 19 logs before the Range Forest Officer, Una vide letter Ex. PW16/D, for proceeding under Sections 52A (1) and 52 A (2) of the Indian Forest Act, there was no requirement, if any, for the prosecution to produce the aforesaid case property before learned trial Court.

10. Having heard learned counsel representing the parties and perused material available on record vis-à-vis reasoning assigned in the impugned judgment passed by learned Sessions Judge, Una, upholding the judgment of conviction and order of sentence recorded by learned trial Court, though, this Court is in agreement with learned Deputy Advocate General that prosecution has successfully proved on record that on the date of alleged incident, 19 logs of khair wood were being transported without permit. Since the vehicle, in which, afore logs were being transported, was being driven by accused Raj Kumar and co-accused Jeet Ram was also sitting in the offending vehicle, they came to be charged under Section 379 of IPC and Sections 41 and 42 of the Indian Forest Act. Since prosecution was not able to prove the charge under Section 379 of IPC, though, Courts below acquitted the petitioners-accused as well as other accused Vaheguru and Janak Singh, but yet on the basis of statements made by police officials, proceeded to hold petitioners-accused guilty of their

having committed offence punishable under Sections 41 and 42 of the Indian Forest Act. Though, this Court finds that initially PW-6, Shakuntla Devi, in her statement recorded under Section 161 Cr.P.C., deposed before police that accused Vaheguru had come to the house of the petitioner-accused Raj Kumar and had asked his mother to permit her son to drive his vehicle for transporting khair wood, for which he had already obtained a valid permit, but version put forth by this witness before the Court below, if read in its entirety, suggests that version put forth by afore witness at the time of making statement under Section 161 Cr.P.C, never came to be reiterated in the Court. But if cross-examination conducted upon afore witness is perused, this Court is persuaded to agree with learned counsel for the petitioners that afore witness changed her stance solely with a view to protect Vaheguru, who was owner of the offending vehicle. If the judgment passed by learned trial Court, whereby acquitting accused Vaheguru, is seen in its entirety, it clearly reveals that version put forth by PW-6 weighed heavily with the Court, while arriving at a conclusion that accused Vaheguru had no knowledge with regard to use of his vehicle in the alleged incident. However, it is apparent from the statement of PW-6 that petitioner-accused Raj Kumar was not engaged as a driver by Vaheguru, who otherwise as per initial version put forth by PW-6, in her statement recorded under Section 161 Cr.P.C, was being repeatedly requested by Vaheguru to drive his vehicle. In case, Vaheguru had not authorized petitioner-accused Raj Kumar to drive the vehicle, it has not been explained to this Court that

under what circumstances petitioner-accused Raj Kumar was driving his vehicle on the date of alleged incident. There is no document on record suggestive of the fact that accused Vaheguru had ever lodged any complaint with the Police Station regarding missing of his vehicle.

11. Leaving everything aside, this Court finds that at no point of time recovered logs of khair wood as well as tools allegedly used for cutting khair wood were produced before learned trial Court. Though, learned Sessions Judge, Una took note of the same, but attempted to justify the illegality committed in that regard by learned trial Court by observing in the order that since Dy. Superintendent of Police, PW-16, Sh. Bimal Gupta, had produced 19 khair logs alongwith saw before the Forest Range Officer, Una vide letter Ex. PW16/D for further proceedings under Section 52 A(1) and 52 A(2) of the Indian Forest Act, the non-production of the case property before the learned trial Court stands accounted for.

12. In the instant case, leaving aside the production of all 19 logs of khair wood, not even a single sample thereof was ever produced before learned trial Court. To prove recovery and to connect accused with the alleged offence, it was incumbent upon the prosecution to produce 19 logs of khair wood as well as tools allegedly used for cutting the same before the Court. In the instant case, a specific question came to be put to the Investigation Officer, (PW-16) at the behest of the petitioners-accused as to whether the logs of wood allegedly recovered from the offending vehicle were produced before learned trial Court or not. In response to aforesaid

suggestion, afore witness stated that same were produced before the Range Forest Officer, Una vide letter Ex.PW16/D for further proceedings under Section 52 A(1) and 52 A(2) of the Indian Forest Act, meaning thereby logs of khair wood as well as tools were never produced before the learned trial Court. By putting aforesaid suggestion accused virtually disputed the recovery of stolen property. Moreover, the mere production of case property, if any, before the Range Forest Officer, Una, vide letter Ex.PW16/D cannot be said to be sufficient to connect the accused with the recovery in the case at hand.

13. At this stage, it would be profitable to reproduce paragraphs No.22 to 27 of the judgment passed by Co-ordinate Bench of this Court in **Madan Singh** case (supra) , which read as under:-

> " 22. It was submitted that the testimony of Sant Ram proved that the vehicle had 14 logs and the accused was present in the vehicle. The accused is liable to be punished for transporting 14 logs. This submission will not help the prosecution. It is trite to say that the prosecution has to prove the case projected by it, and the Court cannot make out a different case for it. Hence, it is not permissible for the Court to make out a case for the prosecution that the accused was transporting 14 logs when the prosecution had not come with this version before the Court.
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> 23. It was specifically mentioned by Sant Ram (PW1) that the forest guard marked his seizure hammer No.5-TH Theog on the seized timber. HC Subhash Chand (PW11) also stated in his examination-in-chief that the timber was handed over to Kishori Lal vide sapurdari memo. Forest Guard put the seizure hammer on the timber and the list (Ex.PW1/A). Therefore, the fact that the timber was marked with the seizure hammer is duly established.

24 The prosecution did not produce 20 logs of deodar before the Court, but produced only one sample (Ex.P2) during the examination of HC Sunil Kumar (PW10), who had identified it. He admitted in his cross-examination that the seizure hammer was not put on the log. He volunteered to say that the impression was not visible due to the lapse of time. No witness stated that the seizure hammer becomes invisible with time. Hence, the explanation provided by HC Sunil Kumar that the seized hammer becomes invisible with time is not acceptable. HC Subhash Kumar (PW11) also stated that he had not seen 19 logs but only 01 log. No reason was assigned for not producing 20 logs of deodar. It was laid down by the Hon'ble Supreme Court in Pawan Kumar v. State of H.P., (2019) 4 SCC 182: (2019) 2 SCC (Cri) 39: 2019 SCC OnLine SC 359 that when the seized wood and the vehicle were not produced, and only one sample was produced, the accused cannot be convicted of the commission of offences punishable under Section 379 of the IPC and Section 42 of the Forest Act. It was observed at page 183: -

> "4. We have heard the learned counsel for the respondent in opposition to the appeal and considered the nature of the evidence available. Non-production of the seized wood and the vehicle, the primary evidence of the offence, renders the prosecution's case fragile and unsustainable. Mere production of the seizure memo does not tantamount to the production of the seized woods and the lorry. Unless the seized wood was produced, mere production of a sample, and there is no material in support that the sample was out of the same 22 logs, we are unable to sustain the conviction of the appellants."

25. Therefore, in view of this binding precedent, the non-production of the timber is fatal to the prosecution's case, and the mere production of one log is not sufficient to record a conviction. 26. Learned Courts below did not consider these aspects. They proceeded on the basis that Sant Ram had supported the prosecution's case. They failed to appreciate that the statement of Sant Ram made the prosecution case suspect that the accused was transporting 20 logs, and the benefit of his testimony was to be given to the accused and not to the prosecution. They did not consider the non-production of the case property and arrived at a

> result which could not have been arrived at by any reasonable person. Therefore, the judgments and order passed by learned Courts below are not sustainable. 27. Consequently, the present revision is allowed, and the accused is acquitted of the commission of the offence punishable under Section 42 of the Indian Forest Act".

14. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in both the petitions and accordingly, same are allowed, as a consequence of which, both the accused, namely Raj Kumar and Jeet Ram, are acquitted of the charges framed against them under Sections 41 and 42 of the Indian Forest Act. Their bail bonds/personal bonds are ordered to be discharged. Interim orders, if any, are vacated. All applications, if any, also stand disposed of.

(Sandeep Sharma)
Judge

April 25, 2026
(shankar)