



Presented on : 30-09-2019  
Registered on : 30-09-2019  
Decided on : 22-07-2026  
Duration : 6 years, 9 months, 22 days

**In the court of  
Additional Chief Judicial Magistrate  
at Palwal,  
(Presided Over by Anjali Jain)**

**CHI/1321/2019**

**Case no. 269/2019**

State Versus Devender son of Bishan, resident of village  
Chandhut, P.S. Chandhut, District Palwal.  
.....Accused.

FIR No. : 385 of 27.07.2019  
Under Section : 379, 188 of IPC  
& 181, 192 of MV Act  
Police Station : City, Palwal

Present: Sh. Shashi Bhushan Mishra, APP for the State.  
Accused Devender on bail represented by  
Sh. Ashok Kumar, Advocate.

**JUDGMENT**

The present accused has been sent up by Police Station,  
City, Palwal for facing trial for offences punishable under section 379,  
188 of IPC & 181, 192 of MV Act.

2. It is the case of the prosecution that on 27.07.2019, HC  
Shishpal along with other police officials was present at Kithwari turn in  
connection with crime and patrolling duty where a secret informer  
informed that the driver of the truck is carrying stolen sand in truck and  
if raid is conducted, he can be caught red handed. Believing this

information to be true, raiding party was prepared. After sometime, a truck was seen coming towards the police officials. The driver of the truck was given signal to stop the vehicle but he tried to flee from the spot. On checking, the vehicle was found to be without any number plate and truck was found to be Marka Swaraj-744 and the driver of the vehicle was involved in illegal manner/illegal transportation without any valid license or transport pass. He thus prayed that legal action be taken against the owner of the vehicle.

Upon receipt of the complaint, an FIR was registered. Investigation was commenced. Statements of witnesses under Section 161 Cr.P.C. were recorded. Accused was arrested and after completion of all formalities and necessities of the investigation, challan was presented in the Court.

3. Copy of the challan was supplied to the accused, free of cost and after finding a *prima facie* case against the accused under sections 379, 188 of IPC and 181/192 of Motor Vehicle Act the accused was charge-sheeted accordingly on 27.11.2019.

4. Prosecution in support of its case has examined two witnesses. Prosecution got examined EHC Raj Kumar as PW1 who was present with investigating officer during investigation of the present case. He deposed in lines of prosecution version and brought on record recovery memo Ex. PW1/A, arrest memo Ex. PW1/B, jamatalashi memo Ex. PW1/C.

Prosecution further got examined SI Shishpal as PW-2 through VC who is investigating officer of this case. He deposed in lines of prosecution version and brought on record tehrir Ex. PW2/A, recovery memo Ex. PW1/A.

5. Thereafter Ld. APP for the State closed the prosecution evidence on 22.07.2026.

6. Statement of the accused under Section 313 Cr.P.C. was recorded on 22.07.2026, wherein, the accused denied all the incriminating evidence against him and pleaded false implication and opted not to lead any evidence in defence.

7. I have heard learned Assistant Public Prosecutor for the State and learned defence Counsel and have perused the record very carefully.

8. Learned Assistant Public Prosecutor for the State argued that in this case, the prosecution has fully proved its case against accused by leading cogent and clinching evidence. The accused has failed to lead any evidence in defence to rebut the case of prosecution. Learned APP requested to convict the accused.

9. Learned defence counsel, on the other hand has argued that the prosecution has failed to prove its case against the accused beyond shadow of reasonable doubt. No independent witness has been joined by police despite availability which has made the case of prosecution as highly doubtful. Learned defence counsel requested to acquit the accused.

10. The point for determination in the present case is whether accused has committed offence punishable under section 379, 188 of IPC and 181/192 of MV Act.

11. After hearing learned Assistant Public Prosecutor for the State and learned defence counsel and perusing the record carefully, I have reached to a conclusion that in this case prosecution has failed to prove its case against the accused beyond shadow of reasonable doubts for below mentioned reasons.

12. In order to prove its case against the accused, the prosecution has examined two witnesses. To link the accused with the alleged offences, it was imperative on part of prosecution to establish the role of the accused. However, the prosecution has failed to establish the role of accused beyond shadow of all reasonable doubts. Though all prosecution witnesses have supported the case of prosecution but learned defence counsel was able to shake their credibility during their cross-examination which is fatal to the case of prosecution. PW-1 deposed during his cross-examination that the vehicle was not weighed in his presence. PW-2 deposed during his cross-examination that no private witness was joined during investigation. He further deposed that no photographs were taken on the spot. He deposed that he has not done the any photography.

13. Admittedly, the place of occurrence where accused was apprehended was a busy road however, in case in hand no convincing reasons has been given for non joining of any independent witness

during recovery of case property and during investigation, which is a serious lacuna in the prosecution case. In case titled as **Amrit Singh vs State of Haryana 1990(2) Civil and Criminal Cases 588**, Hon'ble Punjab & Haryana High Court has held that testimony of witness is not to be doubted or looked upon with suspicion merely because he happens to be a police official, but it is, at the same time, a very well recognized rule of caution adopted by the court to look for corroboration to the testimony of said witness by independent witness particularly when the time, place and circumstances are such that the independent witnesses are easily available. In the case in hand, as per version of witnesses, near the place of recovery many persons were also passing from there but no plausible explanation has been given by the prosecution for not joining any independent witness in the investigation which is a serious lapse on part of prosecution.

14. Further, the prosecution has failed to prove offence punishable under Section 188 of IPC against the accused as there is no copy of order of competent authority placed and proved on case file which the prosecution alleges that accused was found disobeying.

15. Furthermore, the prosecution has failed to prove that alleged sand recovered from the accused was stolen sand to make case falls under Section 379 of IPC. So far as the offence under Section 181/192 of MV Act are concerned, the prosecution has also failed to lead any evidence on the case file to prove that the accused was not having in

his possession any valid registration certificate/driving license, therefore, this offence is not proved against the accused.

16. As per settled preposition of law, the prosecution has to prove its case against the accused beyond shadow of all reasonable doubts and in case of any doubt in the prosecution version, the benefit of doubt always goes in favour of accused. The point posed for determination is answered accordingly.

17. In view of the above discussion, it can safely be concluded that the prosecution has failed to prove its case against the accused beyond shadow of reasonable doubts. Accordingly, accused Devender is acquitted of the charges framed against him in this case, by giving him the benefit of doubt. The bail bonds and surety bonds already furnished by accused are extended for the purpose of Section 437-A Cr.P.C. for another six months from today. Case property, if any, be dealt with as per rules, after awaiting the result of appeal or revision File be consigned to record-room, after due compliance.

Announced in open court:

Dated: 22.07.2026

(Anjali Jain)  
Addl. Chief Judicial Magistrate,  
Palwal (UID No. HR-0304)

Note: This judgment consists of six pages and all pages have been checked & signed by me.

(Anjali Jain)  
Addl. Chief Judicial Magistrate,  
Palwal (UID No. HR-0304)

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