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case registered against him being of the year 1984. Further, the report said that the petitioner had been a Naxalite Activist. No material has, however, been placed before us to show the basis for such opinion.

(3) Such being the circumstances, we cannot, but hold that no justification exists for refusing a passport to the petitioner on the ground of his antecedents.

(4) Let a copy of the report of the Senior Superintendent of Police, Sangrur be forwarded to the Regional Passport Officer, who, in turn is hereby directed to grant to the petitioner the passport applied for within three months from today.

(5) This writ petition is accordingly accepted with costs. Counsel fee Rs. 500.

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*J.S.T.*

*Before : J. S. Sekhon & S. S. Rathor, JJ.*

STATE OF PUNJAB,—Appellant.

*versus*

AMAR SINGH,—Respondent.

*Criminal Appeal No. 98-DBA of 1986.*

3rd September, 1991.

*Code of Criminal Procedure, 1973 (II of 1974)—S. 167(5)—Investigation in summons case not concluded within a period of six months from date of arrest—No permission taken from court for extending period of investigation—Evidence collected beyond period of six months rendered inadmissible—But not evidence collected prior to expiry of six months—Violation of provisions of S. 167(5) does not result in vitiating entire trial.*

*Held, that the legislature in its wisdom has barred the continuation of the investigation after the expiry of period of six months from the date of arrest of the accused. There is no indication, direct or indirect therefrom that the investigation already conducted within the period of six months would also stand vitiated or that the continuation of the investigation beyond the period of six months in summons cases would vitiate the entire trial or result in acquittal of the accused. In other words, it can be well-said that the evidence*

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collected during the investigation beyond the period of six months would be rendered inadmissible by these provisions and not the evidence which was collected earlier by the investigation. Moreover, the Magistrate has been given the powers to extend the period of investigation under the circumstances of a particular case. Under sub-section 6 of this Section, the Sessions Judge has been invested with the powers to review such order of the Magistrate. Thus, the perusal of the provisions of sub-section 5 also provides an oblique indication that the legislature has struck a balance between justifiable protracted investigation and the investigation unnecessarily delayed beyond a period of six months in summons cases. Consequently, by no stretch of imagination, it can be held that the violation of the provisions of S. 167(5) of the Code would result in vitiating the entire trial. (Para 6)

Dr. J. S. Parwana v. State 1985(2) Recent Criminal Reports 59.  
(OVERRULED)

*Appeal from the order of the court of Shri A. C. Aggarwal, P.C.S., Learned Addl. Chief Judicial Magistrate, Gurdaspur, acquitting the accused Charge under section 279/337/427 I.P.C.  
Order : Acquittal.*

Criminal Case No. 24/2.

F.I.R. No. 114, dated 25th September, 1984 U/ss 279/337, and 427 I.P.C., Police Station, City Gurdaspur.

*It has been prayed in the grounds of appeal that Appeal against acquittal may be accepted and the accused/Respondent be convicted and sentenced according to Law.*

*It is further prayed that warrant of arrest of the accused u/s 390 Cr.P.C. may kindly be issued.*

S. S. Saron D.A.G. (Pb.), for the Appellant.

Sarjit Singh, Senior Advocate, Jagdev Singh, Advocate with him,  
for the Respondent.

### JUDGMENT

J. S. Sekhon, J. (oral).

(1) This judgment will also dispose of Criminal Appeal No. 75/DBA of 1986.

(2) The sole controversy involved in Criminal Appeal No. 38/DBA of 1986 and Criminal Appeal No. 75/DBA of 1986 is whether

the provisions of Section 167(5) of the Code of Criminal Procedure, 1973 vitiate the trial in a summons case if the investigation is not concluded within a period of six months from the date of arrest of the accused and no permission is taken from the Court for extending the period of investigation.

(3) In Criminal Appeal No. 98/DBA of 1986, a case under Section 279/337 and 427 of the Indian Penal Code was registered against Amar Singh, respondent on 25th September, 1984. Admittedly, the investigation of that case was not completed within a period of six months. Similarly, in Criminal Appeal No. 75/DBA of 1986, a case under Section 304-A of the Indian Penal Code was registered against Baldev Singh, accused-respondent on 1st January, 1984. In this case also, the prosecution failed to file any charge-sheet or complete the investigation within a period of six months without obtaining any order from the Court.

(4) In both these appeals, after framing of the charge by the trial Court and recording the evidence of some witnesses, it was pointed out to the trial Court that the trial is vitiated under the provisions of Section 167(5) of the Code of Criminal Procedure. The trial Court acquitted the accused-respondent by placing reliance on a Single Bench judgment of this Court in *Dr. J. S. Parwana v. State* (1), and of the Delhi High Court reported in *Raj Singh v. State* (2).

(5) Feeling aggrieved against the impugned order of acquittal, the State has come up in appeal.

(6) We have heard the learned counsel for the parties at length. The provisions of Section 167(5) of the Code of Criminal Procedure reads as under :—

*“167(5). Procedure when investigation cannot be completed in twenty-four hours :-*

If in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the

(1) 1985 (2) RCR 59.

(2) 1984 (1) RCR 581.

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officer making the investigation satisfied the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary."

This Section provides the procedure when investigation cannot be completed in twenty-four hours of the arrest of the accused. There is no dispute that the above provisions have been added by the Legislature in the present Code of Criminal Procedure obviously to limit the time of investigation into petty offences under the Indian Penal Code which are triable as summons cases as per the provisions of the Code of Criminal Procedure, which in turn implies that the speedy trial or prompt administration of justice was the main consideration behind the incorporation of these provisions. A bare glance through the above-referred provisions leaves no doubt that the Legislature in its wisdom has barred the continuation of the investigation after the expiry of period of six months from the date of arrest of the accused. There is no indication, direct or indirect there from that the investigation already conducted within the period of six months would also stand vitiated or that the continuation of the investigation beyond the period of six months in summons cases would vitiate the entire trial or result in acquittal of the accused. In other words, it can be well-said that the evidence collected during the investigation beyond the period of six months would be rendered inadmissible by these provisions and not the evidence which was collected earlier by the investigation. Moreover, the Magistrate has been given the powers to extend the period of investigation under the circumstances of a particular case. Under sub-section 6 of this Section, the Sessions Judge has been invested with the powers to review such order of the Magistrate. Thus, the perusal of the provisions of sub-section 5 also provides an oblique indication that the Legislature have struck a balance between justifiable protracted investigation and the investigation unnecessarily delayed beyond a period of six months in summons cases. Consequently, by no stretch of imagination, it can be held that the violation of the provisions of Section 167(5) of the Code would result in vitiating the entire trial.

(7) It appears that when the trial Court passed the impugned order of acquittal in both these cases, the judgment of a Division Bench of Delhi High Court in *State v. Jai Bhagwan Singh*, 1985 Cri. Law Journal 932 was not brought to its notice. In that case, the Division Bench had overruled the earlier view of the Single Bench

of Delhi High Court in *Raj Singh v. Delhi Administration* 1984 (1) RCR 581 relied upon by the trial Court by holding that the evidence collected within a span of six months after the arrest of the accused could be used against him and not the one collected thereafter and that the non-compliance of the provisions of Section 167(5) of the Code would not vitiate the entire trial or render the entire evidence inadmissible.

(8) The matter does not rest here as view of the Single Bench of this Court in *Dr. Parwana's case* (supra) was also dissented upon in *Ravinder Pal Singh v. U.T. Chandigarh* (3), by a Single Bench of this Court. In that case, the decision of Delhi High Court in *Jai Bhagwan Singh's case* (supra) was relied upon. Against a Single Bench of this Court in *Ganga Ram v. Union Territory, Chandigarh* (4), has taken similar view by holding that the trial cannot be declared as a nullity merely on the ground that the challan was put in the Court after the expiry of period of six months from the arrest of the accused in a case under Section 304-A of the Indian Penal Code.

(9) For the reasons recorded above, the decision of the Single Bench of this Court in *Dr. J. S. Parwana's case* (supra) cannot be said to be a good law and is hereby overruled.

(10) The question then arises whether under the particular circumstances of these cases, the matter be sent back to the trial Court for retrial. In this regard, it is noteworthy in the case of *Amar Singh*, which is a case under Section 279/337 and 427 of the Indian Penal Code, only minor injuries are involved besides damage to the car of the complainant to the extent of Rs. 50 only. In view of the minor nature of offence and factum that *Amar Singh*, accused-respondent has suffered harassment of the pendency of the investigation trial and appeal against him for a period of more than four years, it is not a fit case for sending back for fresh trial. Thus, no further action is called for in this appeal.

(11) The case of *Baldev Singh*, accused-respondent (in Criminal Appeal No. 75-DBA of 1986), stands on different footing as due to his rash and negligent driving, one life was lost. Thus, this case is sent back for retrial with the direction that the trial Court shall use only that evidence against the accused which was collected within

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(3) 1987(1) P.L.R. 391.

(4) 1986(2) R.C.R. 139.

The Hind Samachar Ltd., Jalandhar v. Kewal Krishan Mahendru and another (J. V. Gupta, J.)

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six months from the date of his arrest. The trial Court shall also take into consideration while awarding sentence, the period of harassment which this accused has undergone during the pendency of this appeal before this Court. This appeal stands accepted. Baldev Singh, respondent is directed to appear before the trial Court on 9th October, 1991 and furnish requisite bonds to its satisfaction.

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J.S.T.

Before : J. V. Gupta, J.

THE HIND SAMACHAR LTD., JALANDHAR,—*Petitioner.*

*versus*

KEWAL KRISHAN MAHENDRU AND ANOTHER,—*Respondents.*

*Civil Revision No. 2501 of 1988.*

4th September, 1989.

*Payment of Wages Act, 1936—Ss. 7 & 15—Unauthorised deduction—Bar of limitation—Burden of proof—Onus lies on workman—Order of authority under Payment of Wages Act placing onus of proof on employer is bad—Burden to prove issues shifted on workman.*

*Held, that it is for the workman to prove that the alleged deductions were not justified as contemplated under S. 7 of the Payment of Wages Act, 1936 and similarly whether the application was within the time or not was for the workman to prove. It is for the workman to prove that the alleged deductions have been wrongly made by the employer. Consequently, the impugned order is set aside and the burden of both the issues is shifted on the workman.*

(Para 3)

*Petition Under Article 227 of the Constitution of India read with section 115 and 151 of the Code of Civil Procedure 1908 praying that the petition be accepted, order Annexure P/4 set aside and respondent No. 2 directed to place the onus of issues 2 and 6 on respondent employee.*

Mr. N. K. Sodhi, Sr. Advocate with Mr. Nitin Kumar, Advocate and Mr. Rupinder Singh Khosla, Advocate, for the *Petitioner.*

None, for the *Respondents.*