

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision Nos. 83 and 84 of 2014

Reserved on: 28.9.2026

Date of Decision: 07.10.2026.

Cr. Revision No. 83 of 2014

Tripta Devi Petitioner

Versus

State of HP Respondent

Cr. Revision No. 84 of 2014

Bhag Singh Petitioner

Versus

State of HP Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner(s) : Mr N.S. Chandel, Senior Advocate,
with Mr Sidharth, Advocate, in both
the petitions.

For the Respondents : Mr Ajit Sharma, Deputy Advocate
General, in both the petitions.

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Rakesh Kainthla, Judge

Learned Judicial Magistrate First Class, Court No. 2, Ghumarwin, District Bilaspur, H.P., (the learned Trial Court) convicted and sentenced the petitioners as under:

Sections	Sentence
Section 451 read with Section 34 of IPC	To undergo simple imprisonment for one year each.
Section 323 of IPC read with Section 34 of IPC	To undergo simple imprisonment for six months each.
Section 325 read with Section 34 of IPC	To undergo simple imprisonment for two years each.
All the substantive sentences of imprisonment were ordered to run concurrently. The convicts were ordered to pay ₹5,000/- each to the complainant as compensation.	

2. The petitioners preferred an appeal, which was decided by the learned Additional Sessions Judge, Ghumarwin, District Bilaspur, H.P., camp at Bilaspur, (learned Appellate Court), who noticed that the offences punishable under Sections 451 and 325 of the Indian Penal Code (IPC) provide for imprisonment and fine. Therefore, the learned Trial Court was not justified in imposing the sentence of imprisonment alone.

However, the learned Additional Sessions Judge dismissed the appeal.

3. Mr N.S. Chandel, learned Senior Advocate for the petitioners, submitted that the judgment and order passed by the learned Trial Court are required to be set aside because the learned Trial Court had failed to pass the sentence according to law. However, Mr Ajit Sharma, learned Deputy Advocate General, submitted that no error was pointed out in the judgment of the learned Trial Court, and the error was only in the sentence imposed by the learned Trial Court. Hence, the case can only be remitted to the learned Trial Court to rectify the error pointed out by the higher Court, and it is impermissible to set aside the judgment passed by the learned Trial Court as well.

5. I have given considerable thought to the submissions made at the Bar and have gone through the records carefully.

6. Section 451 of the IPC reads as under:

451. House-trespass in order to commit offence punishable with imprisonment. —

Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence

intended to be committed is theft, the term of the imprisonment may be extended to seven years.

7. Section 325 of the IPC reads as under:

325. Punishment for voluntarily causing grievous hurt.—

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

8. Thus, the offences punishable under Sections 325 and 451 of the IPC use the words, “and shall also be liable to fine”, which clearly show that the fine has to be imposed and it is not sufficient to impose imprisonment.

9. It was laid down by the Judicial Commissioner of Oudh in *Munwa v. Emperor*, 1923 SCC OnLine Oudh JC 72 that when the statute provides for imprisonment as well as fine, it is impermissible to impose fine alone. It was observed:

2. It may be stated for the information of the Subordinate Courts that (a) when the Penal Code, 1860 directs that in addition to a substantive sentence of imprisonment there shall also be a sentence of fine, it does not mean that a fine must be tacked on to a sentence of imprisonment.

3. The correct interpretation is that in such a case, punishment of fine alone cannot be awarded, but there must be a sentence of substantive imprisonment.

10. Hon’ble Supreme Court also held in *State of Maharashtra v. Jugmandar Lal*, 1965 SCC OnLine SC 48 that where

the IPC provides for imprisonment and fine, the Court has to impose the imprisonment and fine. It was observed:

2.... The plain meaning of the words "shall, on conviction, be punishable for the first offence with imprisonment for a term which may extend to six months and with fine which may extend to rupees one thousand" would be that the Court convicting a person of an offence under the Act was bound to award a sentence consisting both of imprisonment and fine. The words "may extend" preceding "six months" and "rupees one thousand" respectively merely give discretion to the Court in so far as the extent of imprisonment or fine to be awarded is concerned and nothing more....”

11. It was held in *Bhikaji Nagarkar v. Union of India*, (1999)

7 SCC 409: 1999 SCC OnLine SC 707 that the Court is bound to award imprisonment and fine for the commission of an offence punishable under Section 325 of the IPC. It was observed at page 427:

“37.....Under Section 325 of the Penal Code, 1860, a person found guilty “shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”. Section 63 IPC provides that where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive. A Single Judge of the Patna High Court in *Tetar Gope v. Ganauri Gope* [AIR 1968 Pat 287: 1968 Cri LJ 1108] took the view that the expression “shall also be liable to fine” in Section 325 IPC does not mean that a sentence of fine must be imposed in every case of conviction in that section. He said:

“Such an expression has been used in the Penal Code only in connection with those offences where the legislature has provided that a sentence of imprisonment is compulsory. In regard to such offences, the legislature has left a discretion in the Court to impose also a sentence of fine in appropriate cases in addition to the imposition of a sentence of imprisonment which alone is obligatory.”

38. We do not think that the view expressed by the Patna High Court is correct as it would appear from the language of the section that sentences of both imprisonment and fine are imperative. It is the extent of fine which has been left to the discretion of the court. In *Rajasthan Pharmaceutical Laboratory v. State of Karnataka [(1981) 1 SCC 645: 1981 SCC (Cri) 244]*, this Court has taken the view that imprisonment and fine both are imperative when the expression “shall also be liable to fine” was used under Section 34 of the Drugs and Cosmetics Act, 1940. In that case, this Court was considering Section 27 of the Drugs and Cosmetics Act, 1940, which enumerates the penalties for illegal manufacture, sale, etc., of drugs and is as under:

“27. Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale or distributes—

(a) any drug—

(i)***

(ii) without a valid licence as required under clause (c) of Section 18,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years and shall also be liable to a fine:

Provided that the court may, for any special reasons to be recorded in writing, impose a sentence of imprisonment of less than one year;

***”

39. This Court said that the High Court imposed a fine of two thousand rupees on each of the three appellants for the offence under Section 18(c) of the Act when Section

27(a)(ii) makes a sentence of imprisonment of not less than one year compulsory for such offence in addition to fine unless for special reasons a sentence of imprisonment for a lesser period was warranted. It would thus appear that this Court was of the opinion that in such a case imprisonment and fine, both are imperative.”

12. It was held in *State of H.P. v. Nirmala Devi*, (2017) 7 SCC 262: (2017) 3 SCC (Cri) 380: 2017 SCC OnLine SC 374 that where the statute provides for imprisonment and fine, it is mandatory to award both. It was observed:

13. Coming to the first question, as can be seen from the language of Sections 307, 328 and 392 IPC, all these sections provide for imprisonment “and” fine. In fact, after specifying a particular term of imprisonment, all these sections use the words “and shall also be liable to fine”. This expression came up for consideration in *Zunjarrao Bhikaji Nagarkar v. Union of India* [Zunjarrao Bhikaji Nagarkar v. Union of India, (1999) 7 SCC 409: 1999 SCC (L&S) 1299] and the Court explained that in such circumstances, it is imperative to impose both the sentences, i.e. imprisonment as well as fine. Thus, there has to be punishment of imprisonment in respect of these offences, and in addition, the convict is also liable to pay a fine. Therefore, awarding the punishment of imprisonment is a must, and there cannot be a situation where no imprisonment is imposed at all. The High Court was, therefore, clearly wrong in not inflicting a sentence of imprisonment, by modifying the sentence awarded by the trial court and obliterating the sentence of imprisonment. Thus, the very approach of the High Court in substituting the sentence with a fine alone is impermissible in law.

XXXXXX

53. Thus, the punishment provided in the aforesaid sections, which contains imprisonment and shall also be liable to fine, has to be read to mean that the offence being proved under Sections 307, 329 and 392 IPC, the punishment of imprisonment and fine are imperative.

54. As noted above, the Penal Code contains a well thought and carefully considered regime of punishment. For graver offences, severe punishments have been provided; where it was thought to provide lesser punishment, the option of imprisonment or fine has been provided for, as noted, in the scheme of Section 309 IPC. The punishments provided in Sections 307, 328 and 392 IPC are those which have been provided for serious offences, and it cannot be countenanced that the offence having been proved, the punishment can only be a fine.

13. Therefore, the learned Trial Court erred in passing the sentence of imprisonment alone.

14. In *Rajasthan Pharmaceutical Laboratory v. State of Karnataka*, (1981) 1 SCC 645: 1981 SCC (Cri) 244, the sentence of imprisonment was passed and the fine was not imposed. Hence, the Hon'ble Supreme Court remitted the matter to the Court for passing an appropriate sentence. It was observed:

“8. In the result, while maintaining the conviction of the appellants, we remit the case to the High Court; the High Court will consider again on the findings already recorded the question of sentence—(a) for the offence under Section 18(c) punishable under Section 27(a)(ii) so far as Appellants 2 and 3 are concerned, and (b) for the offence punishable under Section 28 of which all the three appellants have been found guilty—and pass

appropriate sentences. The appeal is allowed to the extent and in the manner indicated above.”

15. It was held by the Madras High Court in *Dhandapani v. Dhandapani*, 1994 SCC OnLine Mad 506 : (1995) 1 MWN (Cri) 41: 1995 Cri LJ 3099 that when imprisonment was not awarded for the commission of an offence punishable under Section 326 of the IPC, the matter has to be remitted to the Court for passing adequate sentence. It was observed at page 42:

“2. The learned counsel for the petitioner would submit that under Sec. 326, Penal Code, 1860, the sentence to be awarded is imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and the reading of the Section makes it clear that the substantive sentence of imprisonment is compulsory, but the learned Sessions Judge, without awarding the substantive sentence, has imposed only the fine, which is illegal and therefore this defect has to be corrected by remanding the matter for awarding the proper punishment as directed under Sec. 326, Penal Code, 1860. The learned Government Advocate appearing for the second respondent supports the argument of the revision petitioner. But the learned counsel for the first respondent submits that the word ‘shall’ used in Sec. 326, Penal Code, 1860 cannot be taken as mandatory, as the Courts have got discretion to impose the substantive sentence or the fine, and as the fine also is punishment, the failure to award substantive sentence cannot be considered to be illegal and therefore the revision is not sustainable. The learned counsel draws support from a decision of the Supreme Court in *State of U.P. v. Manbodhan Lal*, AIR. 1957 S.C. 912, wherein the Supreme Court has observed that the use of the word ‘shall’ in a statute, though generally taken in a mandatory sense, is not necessarily meant that in every case it shall have that effect. The expression of the Supreme Court by itself makes it clear that the word ‘shall’ shall be generally taken in the mandatory sense, though it should not be in every case. In this case, if we read the Secs. 323 and 324, Penal Code,

1860, to compare with the direction given in Sec. 326, the only inference that could be drawn is that the word 'shall' has to be taken as mandatory. In Secs. 323 and 324, the substantive sentence is only an alternative punishment. For Sec. 323 I.P.C., the word 'may' is used, and the substantive sentence extends up to one year or with a fine up to Rs. 1,000 or with both, whereas for Sec. 324 the substantive sentence is three years or with a fine or with both. The prescribed sentence for those sections is either the substantive sentence or fine, whereas for Sec. 326 the wording of the Section is that "whoever voluntarily causes grievous hurt shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine." Therefore, as the punishment prescribed is the substantive sentence and also the fine, the court awarding the punishment was bound to impose the sentence prescribed under the Code. But in this case, the learned Sessions Judge has not awarded the substantive sentence but only the fine of Rs. 750. Therefore, he has not complied with the direction while imposing the sentence.

3. The learned counsel for the petitioner refers to another decision in *Rayar, In re., 1982 L.W. (Crl.) 47*, wherein, for the offence under Sec. 397, Penal Code, 1860, as the minimum sentence was not awarded, enhancement of sentence was sought. But this Court has found that the framing of the charge under Sec. 397 itself was not proper, and therefore it held that the enhancement of sentence for Sec. 397 was not warranted. Another decision relied upon by him is *State v. Rangaswami, 1981 Crl. L.J. 694*. That was the case in which the minimum sentence was not awarded for the offence under Sec. 397, Penal Code, 1860 and on revision this Court has held that though the non-observance of the provision by the lower court was bound to be corrected by the High Court exercising its revisional powers, the order was found unworkable in that case as apprehending the accused was felt remote due to the long lapse of time. It appears that as the tracing of the accused itself was doubtful, in that case this Court has observed that even if the mistake committed by the lower court was corrected, the order could not be worked out because the accused could not be traced. In this case, the first respondent has entered appearance through counsel here. Therefore, there is no such possibility of an unworkable order.

4. The learned Sessions Judge, without applying his mind with regard to the gravity of the offence, has awarded the punishment of fine only. This revision is not for the enhancement of the punishment but only for the correction of the mistake committed by the lower court. As the punishment prescribed under Sec. 326, Penal Code, 1860 has not been awarded by the Court below, it is non-compliance with the mandatory provision of the Code, and this mistake committed by the lower court has to be rectified when it was brought to the notice of this Court. Therefore, the revision has to be allowed.

5. In the result, allowing the revision, the order of the court below with regard to the sentence alone is set aside, and the matter is remanded back to award the sentence in accordance with the direction of the Code under Sec. 326, Penal Code, 1860.

16. Therefore, it is apparent that the matter has to be remitted to the learned Trial Court for passing the proper sentence.

17. In view of the above, the judgment passed by the learned Appellate Court in Criminal Appeal No.43-10 of 2012, titled Bhag Singh and another Vs. State of H.P., decided on 19.2.2014 and the order of sentence passed by the learned Trial Court dated 17.7.2012, in Case No. 96/2 of 2011/09, titled State of H.P. Vs. Bhag Singh and another, is ordered to be set aside, and the matter is remitted to the learned Trial Court for imposing the sentence as per the law.

18. Needless to say, the learned Trial Court will not be influenced by any observation made by the learned Appellate Court or this Court.

19. The parties, through their learned counsel, are directed to appear before the learned Trial Court on_____, and the record be sent forthwith.

20. The present revisions stand disposed of.

21. It is further clarified that the petitioners shall have a right to prefer an appeal against the judgment of conviction and sentence imposed by the learned Trial Court if they feel aggrieved by the same, which will be decided uninfluenced by any observations made while deciding the earlier appeal.

(Rakesh Kainthla)
Judge

7th September, 2026
(Chander)