

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision Nos. 166 and 167 of 2014****Reserved on: 14.09.2026****Date of Decision: 23.09.2026****1. Cr. Revision No. 166 of 2014**

Tula Ram ...Petitioner

Versus

State of H.P. ...Respondent

2. Cr. Revision No.167 of 2014

Durga ...Petitioner

Versus

State of H.P. ...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 V.K. Gupta, Advocate, in
both the petition(s).

For the Respondent/ : Jitender Sharma, Additional
State Advocate General.

Rakesh Kainthla, Judge

Since both the revision petitions emanate from a common judgment, both of them are taken up together for disposal by way of a common judgment.

2. The present revisions are directed against the judgment dated 11.04.2014, passed by learned Additional Sessions Judge-II, Shimla, H.P. Camp at Rohru, District Shimla, H.P. (learned appellate Court), vide which judgment of conviction and order of sentence dated 23.04.2008, passed by the learned Judicial Magistrate, First Class, Court No. II, Rohru, District Shimla, H.P. (the learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

3. Briefly stated, the facts giving rise to the present revisions are that the police presented a challan before the learned Trial Court against the accused for the commission of an offence punishable under Section 61 (1) (a) of the Punjab Excise Act, as applicable to the State of HP. It was asserted that Inspector Prakash Chand (PW-7), HC Karam Chand (PW-4), Constable Bal Kishan and Constable Rajinder Kumar (PW-5) were present at Kansakoti on 09.12.2005, at 4:30 a.m.

A Max Pick-up bearing mark A/F came from Sungri towards Rohru at high speed. The police stopped the pickup. The driver identified himself as Tula Ram, and the person sitting beside the driver identified himself as Durga Dass. They disclosed the name of the owner as Vijay Singh (PW-6). The police checked the vehicle and recovered 71 boxes of country liquor bearing the mark 'Lal Qila', 10 boxes of Indian-Made Foreign Liquor (IMFL) bearing the mark 'Officer Choice', 25 boxes of beer bearing the mark 'Zingaro' and 21 boxes of IMFL bearing the mark 'Bag Piper' (Ext. P-1 to Ext. P-127). The police demanded the permit/license for transporting the liquor; however, they could not produce any permit/license. HC Prakash Chand prepared a Rukka (Ext. PW2/A) and sent it to the police station, where F.I.R. (Ext. PW2/A) was registered. HC Prakash Chand (PW-7) investigated the matter. He retained 2 bottles of different marks as samples and sealed them with seal 'T'. He obtained the seal impression (Ext. PA) on a separate piece of cloth and handed over the seal to witness Karam Chand after use. He seized the bottles, the vehicle, its documents and key vide memo (Ext. PW4/A). He searched the accused and prepared the memo of search

(Ext.PW-4/B). He prepared the site plan (Ext.PDF). He handed over the bottles to MHC Prakash Chand (PW-1), who deposited them in Malkhana. MHC Prakash Chand sent the samples for analysis to CTL Kandaghat through Constable Vijay Kumar (PW-3), vide RC No. 207/5 on 13.12.2005. The results of analysis (Ext. PD and Ext.PXL) were issued, in which it was mentioned that samples of country liquor contained 50% proof alcohol, samples of IMFL contained 75.1% proof alcohol and samples of beer contained 6.7% V/V proof alcohol each. After the completion of the investigation, the challan was prepared and presented before the learned trial Court.

4. Learned trial Court found sufficient reasons to summon the accused. When the accused appeared, they were charged with the commission of an offence punishable under Section 61 (1) (a) of the Punjab Excise Act, as applicable to the State of HP, to which they pleaded not guilty and claimed to be tried.

5. The prosecution examined 7 witnesses to prove its case. MHC Prakash Chand (PW-1) was working as MHC with whom the case property was deposited. Inspector SHO Raj

Kumar (PW-2) signed the FIR. Constable Vijay Kumar (PW-3) carried the samples to CTL Kandaghat. Karam Chand (PW-4) and Constable Rajinder Kumar (PW-5) are the official witnesses to the recovery. Vijay Singh (PW-6), the owner of the vehicle, proved that he had employed accused Tula Ram as the driver. HC Parkash Chand (PW-7) investigated the matter.

6. The accused in their statements recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.) denied the prosecution case in its entirety. They claimed that they were innocent and were falsely implicated. They did not produce any evidence in their defence.

7. Learned trial Court held that the statements of witnesses corroborated each other. There was nothing in the cross-examination of the witnesses to show that they had any motive to depose falsely against the accused. Vijay Singh (PW-6) proved that he had employed accused Tula Ram as the driver, which corroborated the prosecution version that accused Tula Ram was driving the vehicle. The integrity of the case property was established. The result of analysis proved that the bottles contained proof alcohol in them and were

samples of IMFL, country liquor and beer. The accused had failed to produce any permit/license to transport the liquor. The non-association of independent witnesses was not material, because it was a case of chance recovery. Therefore, the learned trial Court convicted the accused of the commission of offences punishable under Section 61(1)(a) of the Punjab Excise Act, as applicable to the State of HP and sentenced them to undergo simple imprisonment for 1 year each and pay a fine of ₹5,000/- each and, in default of payment of fine, to undergo simple imprisonment for 2 months each.

8. Being aggrieved by the judgment and order passed by the learned trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-II, Shimla, Camp at Rohru, District Shimla, H.P. (learned appellate Court). The learned appellate Court concurred with the findings recorded by the learned trial Court that the testimonies of official witnesses corroborated each other. There was nothing in the cross-examination of the witnesses to show that they were making false statements. The recovery was effected without any prior information, and non-

association of independent witnesses was not material. The owner of the vehicle proved that he had employed Tula Ram as a driver, which corroborated the prosecution version. There was no infirmity in the judgment and order passed by the learned trial Court; hence, the appeal was dismissed.

9. Being aggrieved by the judgments and order passed by the learned Courts below, the accused have preferred separate appeals asserting that the learned courts below erred in appreciating the material on record. The Rukka was sent at 05:30 p.m. after the lapse of more than 12 hours. No independent witness was associated. The integrity of the case property was not established. Not all the bottles were sent for analysis. Therefore, it was prayed that the present revisions be allowed and the judgments and order passed by the learned Courts below be set aside.

10. I have heard Mr N.S. Chandel, learned Senior Advocate, with Mr V.K. Gupta, learned counsel for the petitioner(s) and Mr Jitender Sharma, learned Additional Advocate General, for the respondent/State.

11. Mr N.S. Chandel, learned Senior Advocate, for the petitioners-accused, submitted that no independent witness

was associated despite opportunity and availability. The case property was not sealed on the spot, and the integrity of the case property was not established. The sample seals were not deposited with the MHC and were not sent to the CTL Kandaghat to enable the chemical examiner to compare the seals. It was admitted by the prosecution witnesses that one box of 'Officer Choice' contained country liquor in it, which makes the prosecution case highly suspect. Therefore, he prayed that the present revisions be allowed, and the judgments and order passed by the learned courts be set aside.

12. Mr Jitender Sharma, learned Additional Advocate General, for the respondent/State submitted that the learned courts below had rightly held that the prosecution version was duly proved by the statements of official witnesses. There is no major contradiction in the statements of the witnesses. This Court should not re-appreciate the evidence while exercising revisional jurisdiction. Therefore, he prayed that the present appeal be dismissed.

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

14. It was laid down by the Hon'ble Supreme Court in *Kuntegowda v. Thurubaiah*, 2026 SCC OnLine SC 1485, that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

“7. Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:

“438. Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in

confinement that he be released on his own bond or bail bond pending the examination of the record.

Explanation. —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by subsection (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case,

such a position did not also emanate from the evidence on record.

7.1. This Court, in the *State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659; 2004 SCC (Cri) 2003, observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452; 1999 SCC (Cri) 275, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

“5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any

finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ...”

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

- i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.
- ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.
- iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in *Sanjabij Tari v. Kishore S. Borcar*, 2025 INSC 1158, in similar facts and circumstances

wherein the High Court had reversed concurrent findings of conviction under Section 138 of NI Act, while setting aside the impugned order, observed as under:

“27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GMBH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.”

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

15. The present revision has to be decided as per the parameters laid down by the Hon’ble Supreme Court of India.

16. Constable Rajinder Kumar (PW5) stated that 4 boxes were opened and these were sealed, whereas HC Karam Chand (PW-4) and HC Prakash Chand (PW-7) stated that no seal was put on the boxes. MHC Prakash Chand (PW-1) stated in his cross-examination that no seal was put on any box except the sample bottles

17. Constable Karam Chand (PW-4) and Constable Rajinder Kumar (PW-5) admitted that one box bearing the mark 'Officer Choice' contained country liquor in it. This admission makes the integrity of the case property highly doubtful. No person has explained how the bottles of 'Officer Choice' contained country liquor in them when it contained the bottles of the same mark at the time of recovery. Hence, in these circumstances, the only inference that can be drawn is that the case property recovered at the spot was not produced before the Court. It was laid down by this Court in *Amandeep Singh & Ors. Vs State of HP, 2010 (3) Shim LC 39*, that when the case property was not produced before the Court, the conviction of the accused cannot be recorded. It was observed: -

9...So far as the statement of PW1 Chaman Lal is concerned, no sample of liquor or any seal of the

seized liquor has been produced and proved in Court. The bottles from which the samples were taken have also not been proved in Court. Learned trial Court, as also the Appellate Court, had presumed as a matter of fact that what the witnesses had stated was the correct state of affairs without considering that facts were to be proved from documents which admittedly existed but were not produced in Court. There is no presumption in law that oral evidence can override documentary proof. The existence of a seal can be proved by its production. The Court cannot presume that the sample was kept in safe custody, more especially when such a fact is established by a written document, namely register (s) and certificate in Register No. 21, which is not produced. What the prosecution tried to prove remains unclear. Merely saying that liquor was seized is insufficient without establishing its quantity and safekeeping.”

18. MHC Prakash Chand (PW-1) stated that 71 boxes of ‘Lal Qila’, 10 boxes of ‘Officer Choice’, 25 boxes of ‘Zingaro’, 21 boxes of ‘Bag Piper’ and 2 bottles of each mark were deposited with him. He sent the sample bottles on 13.12.2005 to CTL Kandaghat vide R.C.No. 207/05. He stated in his cross-examination that no seal was deposited with him. Constable Vijay Kumar (PW-3) stated that MHC Police Station handed over 2 bottles of Lal Qila, 2 bottles of Bag Piper, 2 bottles of Officer Choice and 2 bottles of Zingaro sealed with seal ‘T’ to him with the direction to carry them to CTL Kandaghat for chemical analysis vide RC no. 207/5.

19. MHC, Prakash Chand (PW-1) and Constable Vijay

Kumar (PW-3) have not stated that any sample seal was deposited or that any sample seal was sent to the CTL, Kandaghat. The copy of the road certificate was also not produced on record to show that the sample seal was sent with the bottles.

20. It was laid down by this Court in *Kishan Chand & Another Vs. State 2009 (2) HLJ 925* that where the person carrying the case property did not say anything about the carrying of the sample seal, link evidence is missing. The endorsement made by CTL Kandaghat in these circumstances that seal impressions were compared with the sample seal will lose their significance. It was observed: -

“6. It is incumbent on the prosecution to prove that the accused were in possession of an incriminating article or an offensive material before they are convicted for keeping in possession the contraband or the offensive material. From its recovery and taking samples, the chain of evidence until the samples are analysed in the laboratory should be complete. In case of breach of the chain of evidence, it gives rise to a reasonable doubt that the samples were tampered with, to the benefit of which goes to the accused.

7. In the instant case, PW-6 A.S.I. Churamani, however, did not state about the deposit of the case property in the Malkhana. But PW-5 MHC Hukam Singh stated that on 19.6.2000 A.S.I. Churamani had deposited the case property sealed with seal impression 'N' in the Malkhana with him. But he

nowhere stated that the sample of the seal was also deposited with him in the Malkhana. Even the extract of the Malkhana Register was not placed and proved on record. Thus, it cannot be said that the sample of the seal was also deposited in the Malkhana with him along with the case property.

Even PW-2 constable Rajinder Kumar also did not say about handing over the sample of the seal to him when he had taken the samples for examination to C.T.L. Kandaghat. The copy of R.C. No.55/2000, vide which he took the sample for analysis, has also not been placed and proved on record. Had it been there, it could have thrown some light on this aspect of the matter, whether the sample of the seal was also entrusted to him, which was further handed over by him to the person who received the samples in the laboratory, for its comparison with the seal found on samples sent for analysis.

8. The lithographic impression on the report Ext. PW-4/A, of course, shows that seals on the samples were found intact and unbroken and tallied with the impression seal sent separately, but it loses its importance in view of the fact that no witness has stated to have either deposited the sample seal along with case property in the Malkhana or sent it separately to the Laboratory when the samples were taken for analysis. Then how the sample of the seal could be available in the Laboratory for its comparison? The lithographic stamp is mechanically put on the report.

9. Further, the case of the prosecution is that the seal, after its use, was given to PW-1 Ravinder Kumar, but he did not say that the seal was ever entrusted to him. Thus, where the seal used on the samples is not known, in these circumstances a substantial doubt has arisen, and the prosecution could not exclude the possibility of tampering with the samples.

Thus, the link evidence in the instant case is found missing. There is no evidence on record regarding the

entrustment of seal and no entry in the R.C. and Malkhana register; therefore, reasonable doubt is cast on the probity of the prosecution case, which fact was lost sight of by the courts below. Therefore, in these circumstances, the benefit of the doubt should have been given to the petitioners.”

21. This position was reiterated in *State of H.P. Vs.*

Rakesh Kumar 2018 (1) HLJ 73 wherein it was held:-

“7. Interestingly, there is no mention, if any, regarding the handing over of the seal by this witness to CTL Kandaghat, for comparison. It has come in his statement that he had taken samples, but he has not stated that a specimen seal was also given to him for depositing in CTL Kandaghat. Samples were sent to CTL Kandaghat through Jai Singh (PW- 6), who simply deposed that he had sent samples through PW-5 DurgaDutt. Interestingly, he nowhere stated that the specimen seal impression was also sent separately for chemical analysis.

18. True it is that reports of CTL, Ext. PW-7/G to Ext. PW-7/K show that the specimen seal impression allegedly separately sent, tallied with the seal impressions on the samples; however, link evidence is missing as to how the specimen seal impression reached the chemical analyst. Similarly, it emerges from the record that there is no mention, if any, in the Challan with regard to sending of specimen seal to CTL Kandaghat. This certainly creates doubt with regard to the genuineness of the prosecution case.

19. This Court, in a case titled *State of H.P. vs. Pankaj Sood, Latest HLJ 2009 (HP) 727*, has held that in such a case, by no stretch of the imagination, it can be presumed that the samples were sent along with the sample seal for comparison, and it was held that the prosecution case was doubtful on this count. It was further held by this Court in the aforesaid case that the prosecution is obliged to prove that the article

recovered from the possession of the accused is contraband within the meaning of the Act. For that, from the time of recovery till the examination of the samples, the link is required to be completely proved. Seals used on the samples must be intact and unbroken, and the said seals should tally with the sample of the seal taken separately at the time of sampling by the Investigating Officer to overrule every possibility of tampering with the contents of the samples.”

22. Similar is the judgment in *Jagdev Singh v. State of H.P.*, 2015 SCC OnLine HP 2520 wherein it was observed:

36. Thus, there is no link evidence establishing the factum of receipt of the sample from the doctor till such time it was handed over to the police official who got it deposited in the laboratory. Whether it was kept in safe custody and not tampered with remains unproven on record.

37. The SHO/Investigating Officer has not deposed that the sample was deposited in the police station. Where the sample was kept between the 13th and 17th June 2009 remains unexplained on record. Also, seal-H with which the alleged sample was sealed has not been produced in Court. Crucially and significantly, even the Road Certificate has not been produced on record, which would have only thrown light as to with whom and where the sample was kept at the police station.

38. No doubt MLC (Ext.PW-6/G) records the sample to be that of Jagdev (accused), but then the Doctor does not specifically state that the sample was sealed. All that he states is that the sample was handed over to the police in a sealed bag. But then who sealed the same and with which seal, he does not state, and Constable Roshan Lal (PW-5) is also silent about the same. In fact, he is silent about the seal impression. As already observed, ASI Om Prakash and HC Nup Ram

are silent with regard to the sample, much less sealing thereof. It is in this backdrop that it was necessary for the prosecution to have produced the original seal or impression thereof, with which the sample was sealed, for it cannot be said with certainty that the sample was not tampered with.

23. Thus, in these circumstances, the submission has to be accepted as correct that the integrity of the case property from the time of seizure till its analysis was not established.

24. Both the learned Courts below had not adverted to the significant aspect of discrepancy regarding the case property and the absence of evidence of sending the sample seal to the CTL, Kandaghat and erred in convicting and sentencing the accused; hence, the judgments and order passed by the learned courts below cannot be sustained.

25. In view of the above, the present revisions are allowed, and the judgment and order passed by the learned Judicial Magistrate First Class, Court No. II, Rohru, District Shimla, H.P. in Case No. 93/3 of 2007/06 as affirmed by learned Additional Sessions Judge-II, Shimla, H.P. Camp at Rohru, District Shimla, H.P. are set aside, and the accused are acquitted of the charged offence. Fine amount, if any, be refunded to the petitioners/accused after the expiry of the

period of appeal, if no appeal is preferred, and in case of appeal, the same be dealt with as per the orders passed by the Hon'ble Supreme Court of India.

26. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the petitioners/accused are directed to furnish personal bond in the sum of ₹25,000/- each with one surety in the like amount each to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitions/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

27. A copy of this judgment, along with the records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

23rd September, 2026
(Ravinder)