

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 265 of 2015

Reserved on: 25.09.2026

Date of Decision: 07.10.2026.

Pawan Kumar

...Petitioner

Versus

State of H.P.

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹

For the petitioner : Mr Rajiv Rai, Advocate.

For the Respondent : Mr Tarun Pathak, Deputy Advocate
General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 16.07.2015 passed by learned Additional Sessions Judge, Ghumarwin, District Bilaspur, HP. (learned Appellate Court) vide which the judgment of conviction dated 30.07.2014 and order of sentence dated 05.08.2014 passed by learned Additional Chief Judicial Magistrate Ghumarwin, District Bilaspur (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in*

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

the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan before the learned Trial Court against the accused for the commission of offences punishable under Sections 279, 337 and 338 of the Indian Penal Code (IPC). It was asserted that informant Hans Raj (PW1) was cleaning the generator of the petrol pump on 03.02.2007. A bus bearing registration No. HP69-0151 came from Ghumarwain at about 01:45 p.m. The driver suddenly turned the bus towards the petrol pump. A scooter bearing registration No. HP-11-0108 was overtaking the bus. The driver of the scooter drove the scooter out of the road to avoid the accident, but the driver's side tyre of the bus hit the scooter. Amarjeet sustained injuries. He was taken to the hospital. Accused Pawan Kumar was driving the bus, and the accident occurred because of his negligence in turning the bus without looking at the traffic moving on the road. The matter was reported to the police, and an entry (Ext.PW10/A) was registered in the police station. HC Roshan Lal (PW12) went to the spot for verification. He recorded the informant's statement (Ext.PW12/A) and sent it to the Police Station, where FIR

(Ext.PW12/B) was registered. HC Roshan Lal (PW12) investigated the matter. He took photographs of the spot (Ext.P1 to Ext.P4), whose negatives are Ext.P5 to Ext.P8. He prepared the site plan (Ext.PW12/D). He seized the scooter and the bus vide memos (Ext.PW12/E and Ext.PW12/F). He filed applications (Ext.PW9/D and Ext.PW9/E) for conducting the medical examination of the injured. Dr Kamlesh (PW9) examined Amarjeet and found that he had sustained multiple injuries. He issued the MLC (Ext.PW9/A) and referred him to District Hospital for further management. The case summary was issued by PGI, and a fracture of the left frontal bone was detected. The nature of the injury was stated to be grievous. Dr Kamlesh Sharma (PW9) also examined Harish Sharma and found that he had sustained simple injuries, which could have been caused within 6 hours of examination in a Motor Vehicle accident. He issued the report (Ext.PW9/E). Sukh Dev (PW4) conducted the mechanical examination of the bus and found no defect in it that could have led to the accident. He issued the report (Ext.PW4/A). HC Dev Raj (PW5) examined the scooter and found no defect in it that could have led to the accident. He issued the report (Ext.PW5/A). The statements of witnesses were recorded as per their version, and after the completion of the

investigation, the challan was prepared and presented before the Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of offences punishable under Sections 279, 337 and 338 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined twelve witnesses to prove its case. Informant Hans Raj (PW1) is an eyewitness. Karam Dev (PW2) and Rajesh Kumar (PW3) did not support the prosecution case. Sukh Dev (PW4) examined the bus, and HC Dev Raj (PW5) examined the scooter. Harish Kumar (PW6) was driving the scooter. Purshottam (PW7) is the owner of the bus and proved that he had employed the accused as a driver. Rajender Kumar (PW8) is the owner of the scooter. Dr Kamlesh Sharma (PW9) examined the injured. Constable Suresh Kumar (PW10) proved the entry in the daily diary. Constable Raj Kumar (PW11) witnessed the recovery. HC Roshan Lal (PW12) investigated the matter.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the prosecution case in its entirety. He claimed that a false case was made against him and he was innocent. He did not produce any evidence in his defence.

6. The learned Trial Court held that the testimony of Harish Kumar (PW6) was duly corroborated by the site plan and the photographs. It was proved on record that the accused had suddenly turned the bus without looking for the scooter, overtaking his bus. The bus hit the scooter and caused injuries to Harish and Amarjeet. Hence, the learned Trial Court convicted and sentenced the accused as under:

Sections	Sentence
Section 279 of IPC	To undergo simple imprisonment for three months, pay a fine of ₹1000/- and in default of payment of fine, to undergo simple imprisonment for fifteen days.
Section 337 of IPC	To undergo simple imprisonment for three months, pay a fine of ₹500/- and in default of payment of fine, to undergo simple imprisonment for 15 days.

Section 338 of IPC	To undergo simple imprisonment for three months, pay a fine of ₹1000/- and in default of payment of fine, to undergo simple imprisonment for fifteen days.
All the substantive sentences of imprisonment were ordered to run concurrently.	

7. 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, Ghumarwin, District Bilaspur, HP, camp at Bilaspur (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the bus was being driven towards the right side of the road, which led to the accident, causing injuries to the occupants of the scooter. The accused was supposed to drive the bus towards the left side of the road. However, he failed to adhere to the duty imposed upon him, which was the proximate cause of the accident. Merely because Harish Kumar had a learner's licence does not mean that he was negligent. The learned Trial Court had imposed an adequate sentence and no interference is required with the judgment and order passed by the learned Trial Court.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that the learned Courts below erred in appreciating the material on record. The prosecution has failed to prove the negligence of the accused. The driver of the scooter had a learner's licence, and there is no evidence that the pillion rider had a valid licence with him. The spot map was not correctly appreciated. The accident had not taken place due to the sudden turn of the bus because the bus had entered the gate of the petrol pump. The other witnesses had not supported the prosecution case, and the benefit of the same should have been extended to the accused. Hence, it was prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

9. I have heard Mr Rajiv Rai, learned counsel for the petitioner/accused, and Mr Tarun Pathak, learned Deputy Advocate General for the respondent/State

10. Mr Rajiv Rai, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. As per the

prosecution version, the bus had suddenly turned and hit the scooter overtaking the bus; therefore, the accident should have taken place on the left side of the road, but the accident had occurred inside the petrol pump, which shows that the prosecution version is not correct. The learned Appellate Court held that the accused had driven the bus towards the right side, which is not correct because the accused had entered inside the petrol pump to get the diesel filled in the bus. There was no violation of the Rules of the Road Regulations. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Tarun Pathak, learned Deputy Advocate General for the respondent/State, submitted that the learned Courts below have concurrently held that the accused was negligent in driving the bus and the informant's testimony was reliable. These are pure findings of fact and this Court should not re-appreciate the evidence while deciding the revision petition. Hence, he prayed that the present revision be dismissed.

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

13. 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 sub-section (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 reappraise 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 in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappraising 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 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.

14. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. The informant Hans Raj (PW1) stated that he saw the bus entering inside the petrol pump; a scooter came and hit the bus. The scooter riders sustained injuries. They were taken to the hospital. He was permitted to be cross-examined. He denied that the bus suddenly turned and hit the scooter overtaking the bus. He denied the previous statement recorded by the police. Thus, it is apparent that he has not supported the prosecution case.

16. Karam Dev (PW2) stated that he was present in his shop. He heard a noise and saw that the scooter had hit the bus. The pillion riders sustained injuries in the accident. The injured

were taken to the hospital. He was permitted to be cross-examined, and he denied that the scooter was trying to overtake the bus, but the driver of the bus suddenly turned it towards the petrol pump, causing injury to the scooterist. He denied the previous statement recorded by the police. His statement also does not establish the prosecution case.

17. Rajesh Kumar (PW3) stated that he is running a mechanic shop. He heard a noise. He came out and saw that a person's scooter had met with an accident. The scooterist had sustained injuries. The injured were taken to the hospital. He was permitted to be cross-examined. He denied the previous statement recorded by the police. Again, this witness has not supported the prosecution case.

18. Harish Kumar (PW6) stated that he was driving the scooter bearing registration No. HP-11-0108 on 03.02.2007. He was overtaking the bus. However, the driver of the bus turned the bus towards the petrol pump without flashing an indicator. He tried to save himself by going inside the petrol pump, but the driver hit the bus. He sustained injuries in the accident. The accident occurred because of the negligence of the accused.

19. HIs testimony is contradicted by the site plan and the photographs of the spot. According to the site plan (Ext. PW12/D), the place of the accident, marked as point “A,” is located well beyond the petrol pump, and the accident could not have occurred while driving the bus to the petrol pump. The spot photographs (Ext. P1 to Ext. P4) show bloodstains on the tiles inside the petrol pump, showing that the accident had occurred inside the petrol pump. As per his version, the bus and the scooter were travelling from Ghumarwin, and they should have been on the left side of the road. Had the bus driver swerved suddenly, as stated by him, the scooterist would have had no time to react, and the scooter would have fallen on the left side of the road. Instead, both the bus and the scooter were found inside the petrol pump. His explanation that he tried to avoid the accident by taking the scooter inside the petrol pump is not acceptable because he would have had no opportunity to go inside the petrol pump on the sudden swerving of the bus. Therefore, this witness has not disclosed the complete truth as to how the accident had taken place, and his testimony cannot be relied upon.

20. HC Roshan Lal (PW12) admitted in his cross-examination that the bus and the scooter were parked outside the paved road, which corroborates the version that the accident had not occurred on the road but outside it.

21. Learned Appellate Court relied upon the Rule of Road Regulations. It is difficult to see how they can be applied to the present case. The accident had not occurred on the road but inside the petrol pump, where the vehicles are taken to fill the fuel. Thus, the learned Appellate Court erred in relying upon the Rules of the Road Regulations to conclude that the accused was negligent in driving the bus.

22. No other person has deposed about the negligence of the accused, and the learned Courts below erred in concluding that the accused was negligent simply because an accident had taken place.

23. Therefore, in these circumstances, the judgments and order passed by the learned Courts below cannot be sustained. Hence, the present revision is allowed, and the accused is acquitted of the charged offences. The fine, if deposited, be refunded to the petitioner/accused after the expiry of the period

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

24. 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 petitioner/accused is directed to furnish personal bond in the sum of ₹25,000/- with one surety in the like amount 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 petitioner/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

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

(Rakesh Kainthla)
Judge

7th October, 2026
(Nikita)