

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. Revision No. 247 of 2026****Reserved on: 23.09.2026****Date of Decision: 09.10.2026**

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**Sunder****...Petitioner****Versus****Laxmi Narayan & Anr.****...Respondent**

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**Coram*****Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?<sup>1</sup> Yes*****For the Petitioner : Mr Rajesh Mandhotra, Advocate.****For the Respondent : Nemo**

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**Rakesh Kainthla, Judge**

The present revision is directed against the judgment dated 27.03.2025 passed by learned Additional Sessions Judge (I), Kangra at Dharamshala, District Kangra (learned Appellate Court) vide which the judgment passed by learned Judicial Magistrate First Class, Court No. 2, Dharamshala, District Kangra (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).*

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

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 an offence punishable under Section 341 of the Indian Penal Code (IPC). It was asserted that the informant, Sunder Aggarwal (PW2), found on 24.06.2011 that accused Laxmi Narayan had obstructed the way to his room and the store by constructing an iron grill and a door. There was no other passage to approach them. The informant had kept his articles inside the store. He filed a complaint (Ext.PW2/A) before the police. The police registered the FIR (Ext.PW5/A). HC Ranjit Singh (PW5) investigated the matter. He visited the spot and prepared the site plan (Ext.PW5/B). He took the photographs (Ext.P3 and Ext.P4) of the spot. He obtained the copies of jamabandis (Ext.PW5/D and Ext.PW5/E), and recorded the statements of witnesses as per their version. The challan was prepared and presented before the learned Trial Court after the completion of investigation.

3. The 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 an offence

punishable under Section 341 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined five witnesses to prove its case. Yoginder Sharma (PW1) and Amrit Singh (PW3) are the eyewitnesses. Sunder Aggarwal (PW2) is the informant. SHO Mukesh Kumar (PW4) prepared the challan. HC Ranjeet Singh (PW5) 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 stated that the witnesses had deposed falsely against him at the informant's instance. A false complaint was made against him because of the previous litigation. He examined Gurdyal Singh (DW1) to prove his defence.

6. The learned Trial Court held that the prosecution witnesses had not seen the accused affixing the gate and obstructing the informant's path to the room and store. The prosecution's version was not proved beyond reasonable doubt. Hence, the learned Trial Court acquitted the accused.

7. Being aggrieved by the judgment passed by the learned Trial Court, the victim filed an appeal which was decided by learned Additional Sessions Judge-1, Kangra at Dharamshala

(learned Appellate Court). The learned Appellate Court held that the appeal under Section 378 of the CrPC was not maintainable before the Court of Sessions as the offence was bailable in nature. The view taken by the learned Trial Court was a reasonable view that could have been taken based on the material placed before it. An application under Section 391 of CrPC was also filed before the learned Appellate Court, but this application was dismissed after holding that the documents could have been produced before the learned Trial Court and no reason was assigned as to why the documents were not produced during the trial. There was no infirmity in the judgment passed by the learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgment passed by the learned Courts below, the victim has filed the present revision asserting that the learned Courts below erred in appreciating the material on record. The learned Appellate Court held that the appeal was not maintainable under Section 378 of CrPC and also returned findings on merits, which was not permissible. The appeal against acquittal at the victim's instance lies under Section 372 of the CrPC before the Court where an appeal against conviction lies. An appeal against the conviction recorded by the learned Magistrate

lies before the Court of Sessions, and the appeal was maintainable before the learned Sessions Court. The prosecution case could not have been doubted because of the non-examination of the witnesses. The photographs proved that the path was obstructed by the iron gate installed by the accused. The defence evidence also proved that the iron gate was installed on 13.04.2011 and the factum of installing the iron gate by the accused was never in dispute. Gurdyal Singh (DW1) was deferred for cross-examination, but he was not summoned for further cross-examination, and this was a material infirmity in the procedure adopted by the learned Trial Court. Therefore, it was prayed that the present revision be allowed and the judgments passed by learned Courts below be set aside.

9. Mr Rajesh Mandhotra, learned counsel for the petitioner, submitted that the learned Courts below held that there was no evidence that the iron gate was installed at the instance of the accused. However, the defence evidence proved that the accused had asked Gurdyal Singh (DW1) to install the gate. Therefore, the fact that the gate was installed at the instance of the accused was not in dispute. The learned Appellate Court held that the appeal was not maintainable before it. However, it

also returned findings on merit, which is impermissible. Gurdial Singh (DW1) was deferred but was not recalled for further cross-examination, and the prosecution's right to cross-examine Gurdial Singh (DW1) was taken away. Therefore, he prayed that the present revision be allowed and the judgments passed by learned Courts below be set aside.

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

11. 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 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 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.

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

13. Learned Appellate Court held that the appeal against acquittal does not lie before the Court of Sessions under Section 378 of the CrPC. Learned Appellate Court failed to notice that the appeal was preferred by a victim under Section 372 of the CrPC and lies before the Court where an appeal against conviction is maintainable. It was laid down by the Hon’ble Supreme Court in *Subhas Chandra Sarkar vs. The State of West Bengal and Ors.*

(22.09.2026 - SC): MANU/SC/1084/2026 that an appeal against acquittal recorded by the Magistrate under Section 413 of Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023 (corresponding to Section 372 of the CrPC) lies before the Sessions Court and not before the High Court. It was observed:

12. Hence, when there is a conviction in a trial held by a Magistrate of the First Class or the Second Class, an appeal lies to the Sessions Court. Going by the proviso to Section 413, an appeal filed by a victim against an order of acquittal also has to be before the Court to which an appeal ordinarily lies against the order of conviction of such Court. The order of acquittal passed by a learned Magistrate, hence, has to be appealed before the Court in which a conviction ordered by a Magistrate can be appealed, which is the Sessions Court.”

14. Therefore, the appeal was maintainable before the learned Sessions Court and learned Appellate Court erred in holding that the appeal was not maintainable before the Court of Sessions and should have been filed before this Court.

15. The record shows that Gurdyal Singh (DW1) was subjected to cross-examination on 11.07.2018. However, his cross-examination was referred at the request of the learned APP, who wanted to produce the certified copy of the receipt dated 13.04.2011. Thereafter, the witness was present on 21.08.2018, but learned APP could not cross-examine him in the absence of the certified copy of the receipt. When the certified copy was not

produced, the Court closed the right to cross-examine the witness on 11.09.2019. The witness was only deferred at the request of the learned APP who wanted to put the certified copy of the receipt to him and the learned APP had not produced the certified copy; therefore, the Court had no option but to close the right of cross-examination of the witness, and there is no infirmity in the order passed by the learned Trial Court closing the right to cross-examine the witness.

16. Yoginder Sharma (PW1) admitted in his cross-examination that no iron gate was installed in his presence and the gate was installed before his arrival on the spot. Sundar Aggarwal (PW2) also admitted in his cross-examination that the gate was not affixed in his presence and it was installed before his arrival. Amrit Singh (PW3) also admitted in his cross-examination that the grill was not installed in his presence. He volunteered to say that the grill was already installed before his presence. Therefore, no witness had seen the accused installing the grill, and the prosecution's version that the accused had installed the grill and obstructed the passage of the informant leading to the room and the store was not proved.

17. Gurdial Singh (DW1) stated that he had put an iron door outside the informant's house in April, 2011. It was submitted that the testimony of this witness establishes that the gate was installed at the instance of the accused and the learned Courts below erred in holding that there was no proof of the fact that the accused had installed the gate. This submission will not help the informant. It was a specific case of the prosecution that a grill was installed in the *verandah* on 24.06.2011. This witness only stated that he had installed an iron gate in April 2011. Therefore, there is a discrepancy in the dates of installing the iron gates. Further, as per the prosecution, the iron gate was affixed in the *verandah*, whereas Gurdayal Singh stated that he had installed the gate outside the door of the accused. Therefore, the iron gate installed by Gurdayal Singh at the instance of the accused has not been connected to the iron gate regarding which the charge sheet was filed. Thus, not much advantage can be derived from the statement of the defence witness.

18. The only allegation against the accused was that he had installed an iron grill to obstruct the informant's passage to his room and the store, which was not proved. Therefore, learned Courts below had rightly held that the prosecution had failed to

prove its case beyond reasonable doubt. This was a reasonable view that could have been taken based on the material placed on record, and there is no jurisdictional error in the findings so recorded by the learned Courts below.

19. No other point was urged.

20. In view of the above, the present revision petition fails and is dismissed. All the pending applications, if any, also stand disposed of.

21. A copy of the judgment be sent to the learned courts below for information.

**(Rakesh Kainthla)**  
**Judge**

**9<sup>th</sup> October, 2026**  
**(Nikita)**