

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 822 of 2026

Reserved on: 11.09.2026.

Decided on: 22.09.2026

Shyamu Gupta

.... Petitioner

Versus

Suman Gupta and others

.... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the Petitioner : Mr Y.P. Sood, Advocate.

For the Respondents : None.

Rakesh Kainthla, Judge

The petitioner has filed the present petition against the judgment dated 03.06.2026 passed by learned Additional Sessions Judge (II), Solan (H.P.) Camp at Arki (learned Appellate Court), vide which the judgment dated 09.09.2025 passed by learned Judicial Magistrate First Class, Arki, District Solan, H.P. (learned Trial Court) was upheld. (*The parties shall hereinafter be referred to in the*

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

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

2. Briefly stated, the facts giving rise to the present petition are that the applicant filed an application under the Protection of Women from Domestic Violence Act, 2005 (DV Act). It was asserted that the applicant was being abused and beaten by her husband, sister-in-law, brother-in-law, and paternal mother-in-law. They were threatening her that her husband's second marriage would be solemnised. The applicant's husband told her that she was purchased and she was only needed in bed. She would be turned out of her matrimonial home if she failed to act according to the wishes of her husband.

3. The application was opposed by filing a reply, taking a preliminary objection regarding lack of maintainability. It was asserted that the applicant is not aggrieved in any manner as she was residing separately on her own. She did not require any relief under the DV Act. No violence of any kind was committed against her. She was never told that the second marriage of her husband would be solemnised or that she was purchased. Therefore, it was prayed that the application be dismissed.

4. The parties were called upon to produce the evidence, and the applicant examined herself (AW1) and Naval Prakash (AW2). The respondent No. 1 examined himself (RW1) and Mast Ram (RW2).

5. Learned Trial Court held that Section 3 of the DV Act provides for mental and physical cruelty. The evidence on record proved that there was a dispute between the parties. The applicant specifically asserted that she was subjected to Domestic Violence. The plea taken by the respondent No. 1 that the applicant was earning ₹10,000 /- per month by doing stitching work was not proved. The applicant was unable to maintain herself and her children, whereas the respondent No. 1 had sufficient means to support them. Therefore, the application was allowed, and respondents were prohibited from committing any act of violence against the applicant, and the respondent No. 1 was directed to pay ₹8,000/- per month to the applicant No. 1 and ₹4,000/- per month each to her children towards maintenance and ₹2,000/- per month to the applicant as the rent for alternative accommodation.

5. Being aggrieved by the judgment passed by the learned Trial Court, the respondent No. 1 filed an appeal which was decided

by the learned Additional Sessions Judge (II), Solan (H.P.) and by the learned Appellate Court. The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the applicant was being subjected to cruelty. The respondent No. 1 admitted that he was residing in his own flat at Nigam Vihar, Chhota Shimla, which had been purchased by him for ₹14-₹15 lac/-. However, he asserted that he had sold the house and was residing with Mast Ram (RW2), which was not supported by Mast Ram (RW2). The respondent No. 1 was providing admission fees and other expenses of her children in a prestigious school in Shimla. Therefore, he was in a position to provide maintenance to the applicant and her children. However, the maintenance of ₹8,000/- awarded to applicant No. 1 was excessive and was reduced to ₹6,000/- per month.

6. Being aggrieved by the judgments passed by the learned Courts below, the original respondent No. 1/present petitioner has filed the present petition asserting that the learned Courts below failed to exercise the jurisdiction vested in them as per the law. The applicant has not proved any act of Domestic Violence. The applicant admitted in her cross-examination that the respondent was providing facilities to her during her stay in her matrimonial

home. She also admitted that she was residing at Solan on her own. Therefore, her plea that she was being subjected to Domestic Violence was not proved, and the learned Courts below erred in holding that the applicant's version was believable. The amount of maintenance is excessive. The affidavits were not considered while awarding the maintenance. The learned Courts below wrongly considered the income of the petitioner as ₹50,000 /- per month without any evidence. Therefore, it was prayed that the present petition be allowed and the judgments passed by the learned Courts below be set aside.

7. Mr Y.P. Sood, learned counsel for the petitioner, submitted that the learned Courts below erred in appreciating the material on record. The applicant admitted in her cross-examination that she had left her matrimonial home voluntarily; therefore, she was not entitled to maintenance. The amount of maintenance awarded by the learned Courts below is excessive. Therefore, he prayed that the present petition be allowed and the judgment passed by the learned Courts below be set aside. He relied upon the judgment of this Court in *Rachna Verma vs. Inderjeet Singh* 2026:HHC:37388 in support of his submission.

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

9. 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 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.

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

11. The applicant had specifically asserted in the Domestic Incident Report that her husband, her paternal mother-in-law, sister-in-law and brother-in-law used to abuse and beat her. They were also threatening her and saying that her husband's second marriage would be solemnised. Her husband used to say that she was purchased and was only needed in bed. He also told the applicant that she would be thrown out of her matrimonial home in case she did not act according to the wishes of the respondents. These allegations establish the physical and mental cruelty.

12. The applicant asserted while appearing as AW-1 that her husband was a habitual drunkard. He visited home in an inebriated

condition and beat her. His aunt, sister, and brother would encourage him to beat the applicant. They told her husband to divorce her, and when she declined, all of them threatened to kill her. She was deprived of food, and she had to sleep with an empty stomach on many nights. Her husband used to threaten her to remarry. She was beaten in the year 2021 and was turned out of her matrimonial home. Her husband threatened that he would kill her and her children in case she returned to her matrimonial home. She was residing in her parental home.

13. She stated in her cross-examination that all the amenities of life were provided to her in her matrimonial home. Her children used to study in Saint Thomas School, where the fee for a child is about ₹2,000/ to ₹3,000/- per month. Her husband was paying the fee and other educational expenses. She admitted that she was residing at Solan on her own but volunteered to say that she was ready to go to her matrimonial home, but she was afraid of beatings being given to her.

14. The applicant's statement proves that she was being beaten, abused and threatened. Therefore, her testimony establishes the Domestic Violence.

15. A heavy reliance was placed upon her statement in the cross-examination that all amenities of life were being provided to her in her matrimonial home and that she was residing at Solan on her own to submit that these admissions falsify her claim that she was subjected to harassment or cruelty in her matrimonial home. This submission will not help the petitioner. The provision of amenities of life does not mean that no Domestic Violence could have been committed against the applicant. Further, she has stated that she was residing at Solan on her own but qualified this statement by saying that she was afraid to go to her matrimonial home because of a fear of being beaten. Therefore, residing at Solan was not a voluntary choice but a forced choice created by the circumstances in her matrimonial home.

16. Therefore, no fault can be found with the findings recorded by learned Courts below that the respondents were subjecting the applicants to Domestic Violence.

17. It was submitted that learned Courts below had not considered the affidavit of assets and liabilities while awarding the maintenance. This submission will not help the petitioner. The Hon'ble Supreme Court held in *Rajnish v. Neha*, (2021) 2 SCC 324;

(2021) 2 SCC (Civ) 220; 2020 SCC OnLine SC 903 that the affidavit of assets and liabilities is to be considered while awarding the interim maintenance. It was observed at page 368:

“65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the court concerned, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.”

18. Therefore, the affidavit of assets and liabilities is to be considered while awarding the interim maintenance and not while awarding the final maintenance, and no fault can be found in the judgments of learned Courts below in not considering the affidavit of assets and liabilities.

19. The petitioner admitted in his cross-examination that he had purchased a flat in Nigam Vihar Shimla for ₹14-15 lacs. He claimed that he had sold the flat and was residing with his brother Mast Ram (RW2). Mast Ram (RW2) stated in his cross-examination that the respondent No. 1 was residing somewhere in Nigam Vihar. Therefore, this statement falsifies the plea taken by the petitioner that he had sold his house at Nigam Vihar and was residing with his

brother. The purchase of a house for ₹14-15 lacs at Nigam Vihar shows that the respondent No. 1 is in good financial condition.

20. The respondent No. 1 claimed that he was running a *Rehdi* at Lower Bazar. This is contradicted by Mast Ram (RW2), who stated that respondent No. 1 was running a shop opposite to Mehru Halwai.

21. The State Government has notified the minimum wages of ₹425/- or ₹12,750/- with effect from 24.06.2025. Therefore, respondent No. 1 can be expected to earn ₹12,750/- per month by working at the minimum wages. He is running a shop and would be earning much more than the minimum wages. He had the capacity to purchase a house for ₹ 14-₹ 15 lakhs, and he was paying the heavy fees of the children when they were residing with him. Hence, in these circumstances, the maintenance of ₹6,000/- awarded to the applicant No. 1, ₹4,000/- to each of the two minor children and rent of ₹2,000/- per month cannot be said to be excessive.

22. The respondent No. 1 claimed in the reply filed by him that the applicant was earning ₹10,000/- per month by doing the stitching work. However, the affidavit filed by him does not contain

any such averment. Therefore, it cannot be said that the applicant is in a position to earn her living and does not require any maintenance from the respondent.

23. In *Rachna Verma* (supra), this Court had found that the Domestic Violence was not established and in the absence of Domestic Violence, the petitioner wife cannot be held entitled to any maintenance. In the present case, Domestic Violence has been established, and the cited judgment does not apply to the present case.

24. No other point was urged.

25. In view of the above, the present petition fails and is dismissed.

26. The observation made hereinbefore shall remain confined to the disposal of the instant petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

22nd September, 2026
(Nikita)