

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Criminal Revision No.652of 2025 with
Cr. Revision Nos.653 to 655 of 2025
Judgment Reserved on: 13.07.2026
Date of Decision : 22.07.2026
Judgment uploaded on: 22.07.2026

1. Criminal Revision No.652 of 2025

H.P. Financial Corporation	Petitioner
Versus	
Gaurav Jain	...Respondent.

2. Cr. Revision No.653 of 2025

H.P. Financial Corporation	 Petitioner
Versus	
Parag Jain	 Respondent.

3. Cr. Revision No.654 of 2025

H.P. Financial Corporation	 Petitioner
Versus	
Jaideep Jain	 Respondent

4. Cr. Revision No.655 of 2025

H.P. Financial Corporation	 Petitioner
Versus	
Parveen Kumar Jain	 Respondent

Coram:

The Hon’ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner(s)	: Mr. Ajay Sharma, Senior Advocate with Mr. Tarun Brakta, Advocate.
For the Respondent	: Mr. Udit Shaurya Kaushik and Mr. Rajat Awasthy, Advocates.

Whether reporters of the local papers may be allowed to see the judgment?

Sandeep Sharma, Judge (Oral)

Since common questions of law and facts are involved in both these petitions, this Court, after clubbing the same, heard them together and now same are being disposed of by this common order. However, for the sake of clarity and convenience, the facts of Cr. Revision No.652 of 2025, titled **HP Financial Corporation vs. Gaurav Jain**, are being discussed herein below.

2. Instant Criminal Revision Petition filed under Section 438 read with Section 442 of Bharatiya Nagarik Suraksha Sanhita, 2023, lays challenge to judgment dated 28.10.2025, passed by learned Additional Sessions Judge, Nalagarh, District Solan, Himachal Pradesh, in Criminal Appeal No. 104-NL/10 of 2019, titled as **Gaurav Jain & Ors. v. H.P. Financial Corporation**, whereby judgment of conviction dated 19.09.2019 and order of sentence dated 15.10.2019, passed by learned Judicial Magistrate, First Class, Court No.2, Nalagarh, District Solan, Himachal Pradesh, in Criminal case No. 111/2 of 2011, titled **H.P. Financial Corporation v. M/s P.S. J. Communication (P) Limited and others**, was set-aside and the case was remanded back to the learned trial Court with a direction to decide the same afresh.

3. Precisely, the facts of the case, as emerge from the pleadings as well as evidence adduced on record by the respective parties, are that the HP Financial Corporation (***hereinafter referred to as the 'complainant'***), which is a body corporate incorporated under

the State Financial Corporations Act, 1951 sanctioned term loan to the tune of ₹4.70, 00,000/- in favour of M/s PSJ Communication Pvt. Ltd.**(hereinafter referred to as the 'accused-company')** on 26.09.2001. Out of aforesaid sanctioned loan amount, a sum of ₹3, 90, 71,000/- was disbursed to the company during the period between 08.03.2002 to 16.07.2004 for the purpose of setting up an industrial unit for manufacturing Jelly Filled telephone cables. Directors of the company **(hereinafter referred to as the 'accused')** executed loan agreement dated 19.02.2002, an agreement of hypothecation dated 19.02.2002 and trust letters dated 19.02.2002 and 16.01.2004 in favour of the complainant-Corporation. Accused persons, along with the deceased Sandeep Jain, being Director of the accused-company, had undertaken to hold the mortgaged and hypothecated assets on behalf of the Corporation, in safe custody, until full repayment of loan and interest. Accused-company failed to return the loan amount alongwith interest as per the repayment schedule, as result thereof, complainant-Corporation issued a Recall-cum-Takeover notice dated 20.09.2005, whereby promoters of the company were called upon to return the outstanding amount of ₹5,16,65,607/-(including interest up to 09.07.2005) on or before 20.10.2005. Accused were also apprised that mortgaged and hypothecated assets would be taken over according to the provisions of Section 29 of the State Financial Corporations Act, 1951, upon their failure to return the amount. Since the promoters of the company failed to clear the dues or hand over

peaceful possession of the factory premises despite service of notice, the authorized officer of the complainant-Corporation visited the company premises on 26.10.2005, for taking action in terms of the notice. None of the promoters were found present due to which, complainant-Corporation took possession of the mortgaged and hypothecated assets by breaking the locks of the factory premises. Interestingly, upon inspection of the premises, no machinery or other miscellaneous assets financed by the complainant-Corporation were found in the premises, rather machinery worth ₹4,81,50,000/- was found misappropriated from the factory site. In the aforesaid background, complainant, Sh. Ashok Kumar Arora, Assistant General Manager, filed a written complaint to the SHO, Police Station, Nalagarh, for lodging FIR against the promoters of the company. On the basis of which, FIR No. 98 of 2006, dated 17.04.2006, under Sections 406 and 420 of IPC came to be registered against the accused, named in the FIR. However, after investigation, the Investigating Agency filed a cancellation report before the learned Trial Court. The complainant filed a protest petition against the cancellation report, which came to be treated as a private complaint. After recording the preliminary evidence under Section 200 of Cr.P.C., learned Trial Court took cognizance against the accused persons for their having committed offenses punishable under Sections 406 and 420 of IPC, vide order dated 05.05.2010.

4. On the basis of pre-charge evidence led under Section 244 of the Cr.P.C. by the complainant, learned Trial Court framed charges against the accused persons on 07.07.2018, to which they pleaded not guilty and claimed trial.

5. After the framing of charge, accused persons did not further cross-examine any witness of the complainant, who had already been examined in pre-charge evidence. The complainant also did not produce any other evidence. Upon the closure of the complainant's evidence, learned Trial Court recorded the statements of the accused under Section 313 of the Cr.P.C., wherein they denied the entire incriminating evidence against them and pleaded innocence.

6. The accused, however, examined three witnesses in their defence. learned trial Court, on the basis of the evidence led on record by the respective parties, found the accused guilty of having committed offenses under Sections 406 and 420 of the IPC, and accordingly convicted and sentenced them to undergo simple imprisonment for a period of one year and pay fine of Rs.5000/- each for the commission of offence punishable under Section 406 IPC and to further undergo simple imprisonment for a period of one year and pay fine of Rs.5000/- each for the commission of offence punishable under Section 420 IPC.

7. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence recoded by learned trial

Court, accused preferred an appeal in the Court of the learned Additional Sessions Judge, Nalagarh, District Solan, Himachal Pradesh. Learned Appellate Court, after having examined the records and evidence adduced on record by the respective parties, allowed the appeal and set aside the judgment of conviction and order of sentence passed by learned Court below, with a further direction to Court below to decide the case afresh in light of the observations made in the judgment. In the aforesaid background, complainant has approached this Court by way of the instant petition, praying therein to restore judgment of conviction and order of sentence recorded by learned Court below, after setting aside the judgment of acquittal recorded by the learned Additional Sessions Judge, Nalagarh, District Solan, Himachal Pradesh.

8. Precisely, the case of the complainant, as has been highlighted in the grounds of the petition and further canvassed by Shri Ajay Sharma, learned Senior counsel representing the petitioner-complainant, is that learned Appellate Court has committed material illegalities and irregularities, while considering the facts and circumstances of the case, and in fact, travelled against the law and facts available on records of the Trial Court, while passing the impugned judgment. Hence, same being totally contrary to the provisions of law deserves to be quashed and set aside. Mr. Sharma further argued that cardinal principles of appreciating evidence as a whole has been bid goodbye and evidence has been appreciated in a

piecemeal manner, thereby setting aside the well-reasoned judgment of learned trial Court for totally non-justifiable reasons. Mr. Sharma further submitted that as per the observation of learned First Appellate Court, learned trial Court did not record the examination-in-chief of CW-2, CW-3, CW-4, CW-6, and CW-7 and straightaway proceeded to record the cross-examination of aforesaid witnesses, which is not permissible. Mr. Sharma further submitted that since examination-in-chief of these witnesses already stood recorded during the preliminary evidence, there was no requirement, if any, for learned trial Court to again record examination-in-chief of aforesaid witnesses. He further submitted that impugned order passed by learned Appellate Court not only suffers from the bias of technicality, rather hyper-technicality and as such, impugned judgment passed in the eyes of law is untenable in law and deserves to be set aside.

9. While referring to Section 273 of Cr.P.C, Mr. Sharma submitted that all evidence in a trial is required to be taken in the presence of the accused or his pleader, but once accused, while present in Court along with his counsel, made a statement not to cross-examine the witnesses of the petitioner-complainant, there was no occasion for the application of Section 273 of the Cr.P.C. He submitted that it was for the accused to raise an objection at that stage, but since no objection was raised at that time of filing an appeal, taking cognizance of Section 273 of the Cr.P.C. by learned First Appellate Court in law is hit by the principle of estoppel.

10. Having heard learned counsel for the parties and perused the material adduced on record vis-à-vis reasoning assigned in the impugned judgment passed by learned Additional Sessions Judge, this Court finds no illegality or infirmity in the same and as such, no interference is called for.

11. Bare perusal of Sections 244 and 273 of the Cr.P.C. reveals that learned trial court is required to conduct examination-in-chief of the witnesses of the complainant in presence of the accused persons. Complainant produced CW-2, Shri Anant Ram, CW-3, Shri G.C. Chopra, CW-4, Shri Omkar Singh, CW-6, Shri Subhash Chand Chaudhary and CW-7, Shri Ashok Kumar Arora for their pre-charge evidence under Section 244 of the Cr.P.C, but their examination-in-chief was not recorded after summoning of accused persons under Section 204 of the Cr.P.C.

12. In nutshell, the case of the complainant herein, is that since examination-in-chief of the witnesses stood recorded during the preliminary evidence under Section 200 of the Cr.P.C. at pre-summoning stage, there was no requirement, if any, for learned trial court to record their examination-in-chief afresh at the time of the trial. However, having carefully perused provisions contained under Sections 244 to 247 of the Cr.P.C., which are meant for trial of the cases instituted otherwise than on a police report, this Court is not persuaded to agree with aforesaid submission made at the behest of the complainant.

13. At this stage, it would be profitable to take note of Sections 244 to 247 of the Cr.P.C, which reads as under:-

244. Evidence for prosecution.

(1)When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2)The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

245. When accused shall be discharged.

(1)If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if un-rebutted, would warrant his conviction, the Magistrate shall discharge him.

(2)Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

246. Procedure where accused is not discharged.

(1)If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2)The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3)If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4)If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any,

and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5)If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6)The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.

“ 247. Evidence for defence:-

The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of section 243 shall apply of the case.”

14. It is also important to take note of Section 273 of the Cr.P.C., which reads as under:

“273. Evidence to be taken in presence of accused.

Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

[Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.] *[Inserted by Criminal Law (Amendment) Act, 2013]*

Explanation. - In this Section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.”

15. Careful perusal of aforesaid provisions of law clearly reveals that all the evidence taken in the course of the trial or other

proceedings shall be taken in the presence of the accused or his pleader. Section 273 of the Cr.P.C. makes it incumbent upon the learned Magistrate to ensure that evidence of all the witnesses is recorded in the presence of the accused, thereby safeguarding the ends of justice and ensuring the right to a fair trial to the accused.

16. Section 244 Cr.P.C. talks about the evidence for the prosecution. As per the aforesaid provision of law, in any warrant case instituted otherwise than on a police report, whenever the accused appears or is brought before a Magistrate, the Magistrate is required to hear the prosecution and take all such evidence as may be produced in support of the prosecution. At this stage, the Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him or them to attend or to produce any document or other thing. However, Section 245 of the Cr.P.C., further provides that if, upon taking all the evidence referred to in Section 244, the Magistrate is satisfied that no case against the accused is made out, he shall discharge him. Section 246 provides for the procedure where the accused is not discharged. The Magistrate, after coming to the conclusion that there is ground for presuming that the accused has committed an offence triable under this Chapter, shall frame in writing a charge against the accused, and then such charge shall be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make. If the accused pleads guilty, the Magistrate shall record the plea and may, in his

discretion, convict him thereupon. But in case accused refuses to plead, or does not plead, or claims to be tried, or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, whether he wishes to cross-examine any, and if so, which of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled, and after cross-examination and re-examination, they shall be discharged. Most importantly, the evidence of any remaining witnesses for the prosecution shall be taken next, and after cross-examination and re-examination, they shall also be discharged.

17. In the case at hand, complainant produced seven witnesses for their statements in pre-charge evidence under Section 244 of the Cr.P.C before the learned trial Court. Out of these witnesses, the trial court did not record the examination-in-chief of CW-2, Anant Ram, CW-3, G.C. Chopra, CW-4, Omkar Singh, PW-6, Subhash Chand Choudhary and CW-7, Shri Ashok Kumar Arora and directly proceeded to record their cross-examination.

18. Though Mr. Ajay Sharma, learned Senior Advocate, vehemently argued that since examination-in-chief of afore witnesses stood recorded at the time of pre-charge evidence, there was no requirement, if any, for the Magistrate to again record their examination-in-chief during the trial, rather they were rightly cross-

examined. However, this Court is not impressed with the aforesaid submission of learned counsel for the petitioner.

19. Careful perusal of Section 245 and Section 273 of the Cr.P.C. clearly reveals that evidence taken under Section 200 of the Cr.P.C. is/was only for the purpose of taking cognizance against the accused persons for the commission of the said offence. The examination-in-chief recorded in preliminary evidence could not have been considered as examination-in-chief for the purpose of Section 244 of the Cr.P.C, rather, statements of witnesses produced in pre-charge evidence under Section 244 of the Cr.P.C., including examination-in-chief and cross-examination, were required to be recorded in compliance with Section 273 of the Cr.P.C.

20. Admittedly, in the case at hand, no evidence ever came to be adduced by the complainant after framing of charge before the trial Court, rather, the trial court proceeded to convict the accused on the basis of the examination-in-chief recorded during preliminary evidence under Section 200 of the Cr.P.C. which is not permissible under law. Hence, this Court finds no illegality or infirmity in the findings returned by the learned Additional Sessions Judge that learned trial court has committed a grave illegality by not adopting the procedure as envisaged under Section 244 read with Section 273 of the Cr.P.C. Since procedure, as envisaged under the relevant provisions of law, is/ was not adopted, the learned Appellate Court rightly remanded the case to the trial court with a direction to proceed

afresh by conducting proceedings from the stage of recording the pre-charge evidence under Section 244 of the Cr.P.C.

21. Consequently, in view of the detailed discussion made herein above, this Court sees no valid reason to interfere with the well reasoned judgments recorded by learned First Appellate Court, which otherwise, appear to be based upon proper appreciation of evidence available on record and as such, same are upheld.

22. The present petitions fail and are accordingly dismissed alongwith pending applications, if any. Interim order, if any, is vacated.

July 22, 2026
(shankar)

(Sandeep Sharma)
Judge