2026:HHC:50178

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 329 of 2022
Reserved on: 06.11.2026
Date of Decision: 20.11.2026.

Subhash Chand ...Petitioner

Versus

Onkar Singh and Anr ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

For the Petitioner	:	Mr Ajay Sharma, Senior Advocate with Mr Atharv Sharma, Advocate.
For the Respondent No. 1	:	Mr Vinod Kumar Thakur, Advocate
For Respondent No. 2/State	:	Mr Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision petition is directed against the order dated 05.10.2020, passed by the learned Judicial Magistrate First Class, Jawali, District Kangra, H.P. (learned Trial Court), vide which an application filed under Section 156 (3) of the Code of Criminal Procedure (CrPC) by the petitioner (the

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

applicant/complainant before the learned Trial Court) was dismissed. *(The parties shall hereinafter be referred to in 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 complainant/applicant filed an application under section 156 (3) of the CrPC. It was asserted that the accused had filed an application before the Soil Conservation Officer, Fatehpur, for constructing a solar motor and water tank on Khasra number 1047. He annexed the copy of Jamabandi and tatima of Khasra number 1047 to the application. However, the accused constructed the water tank on Khasra number 1043 in June 2019. The soil conservation officer also sanctioned the funds without visiting the site. The accused uprooted the trees located on the land. The applicant/complainant filed complaints against the accused, but no action was taken; hence, it was prayed that action be taken against the accused.

3. The learned Trial Court held that the allegations made in the complaint/application do not constitute the commission of any cognizable offence. A civil dispute was disclosed by the

averments, which was not cognizable by the criminal court; hence, the application was dismissed.

4. Being aggrieved by the order passed by the learned Trial Court, the complainant/applicant has filed the present revision asserting that anyone can put the criminal law into motion. The averments of the complaint/application satisfied the ingredients of the commission of an offence punishable under section 415 of the Indian Penal Code (IPC), as the accused had made a representation that he would construct the water tank on Khasra No. 1047, whereas he had constructed the water tank on Khasra No. 1043, owned by the government. The accused had also cut various trees existing on the land. The learned trial Court erred in dismissing the application/complaint. Therefore, it was prayed that the present revision be allowed and the order passed by the learned trial Court be set aside.

5. I have heard Mr Ajay Sharma, learned Senior Advocate assisted by Mr Atharv Sharma, learned counsel for the petitioner/applicant, Mr Vinod Kumar Thakur, learned counsel for the respondent No.1/accused and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State.

6. Mr Ajay Sharma, learned Senior Advocate for the petitioner/applicant, submitted that the accused had made a representation that he would construct a water tank on Khasra No. 1047, whereas he had constructed the water tank on Khasra No. 1043. He damaged the trees existing on the land. All these ingredients disclose the commission of a cognizable offence and the learned trial Court erred in holding that no cognizable offence was made out. Therefore, he prayed that the revision be allowed and the order passed by the learned Trial Court be set aside.

7. Mr Vinod Thakur, learned counsel for the respondent No.1/accused, submitted that the complainant/applicant had failed to prove that the water tank was constructed on Khasra No. 1043 and not on Khasra No. 1047. Learned Trial Court had rightly dismissed the application/complaint and no interference is required with the order passed by the learned Trial Court. Hence, he prayed that the present revision be dismissed.

8. Mr Ajit Sharma, learned Deputy Advocate General for the respondent-State, submitted that the dispute is between the private parties and the State has no submissions to make.

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

10. 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:
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> > "**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.
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> > *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 ***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 re-appreciate 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 ***Sanjibij 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 the 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."
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> **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.

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

12. The complainant/applicant submitted that the respondent/accused had obtained sanction for constructing a water tank on Khasra No.1047 and he had constructed the water tank on Khasra No.1043. The document obtained by the applicant under the Right to Information Act shows that the solar motor and water tank were constructed on Khasra number 1047, whose jamabandi and tatima were enclosed. This document falsified the applicant's version that the water tank was constructed on Khasra No. 1043 and not on Khasra No. 1047 for which the

sanction was recorded. Therefore, the material on record did not disclose the commission of any cognizable offence and the learned Trial Court was justified in dismissing the application.

13. In view of the above, there is no jurisdictional error in the order passed by the learned Trial Court requiring any interference from this Court. Hence, the present revision fails and is dismissed.

14. A copy of this judgment, along with records of the learned Courts below, be transmitted forthwith.

(Rakesh Kainthla)
Judge

20th November, 2026
(Nikita)