2026:HHC:50179

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 297 of 2015
Reserved on: 31.10.2026
Date of Decision: 20.11.2026.

Rajan Kaushal ...Petitioner

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

For the Petitioner : Mr Ajay Kochhar, Senior Advocate, with Ms Swati Sharma, Advocate.

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

Rakesh Kainthla, Judge

The present revision petition is directed against the judgment dated 31.07.2015, passed by the learned Sessions Judge, Shimla District, Shimla, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 27.07.2011, passed by the learned Chief Judicial Magistrate, Shimla, District Shimla (learned Trial Court), were upheld. *(The*

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

2026:HHC:50179

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, Food Inspector, filed a complaint before the learned Trial Court for the commission of an offence punishable under section 16 (1) (a) (ii) of the Prevention of Food Adulteration Act (PFA Act). It was asserted that the complainant inspected the premises of M/s Gogiis Hot and Cold Fast-Food Shop on 6th August 2005 at about one p.m. Sunil Kumar was working in the shop, who disclosed on enquiry that Rajan Kaushal was the proprietor of the shop. Tea, coffee, rice, dal, mineral water, soft drinks, snacks, etc., were kept in the shop for sale to the public. The complainant demanded the license for running the shop, but Sunil Kumar could not produce any license. Hence, the complainant prepared the spot memo (Ex.P1) and supplied its copy to Sunil Kumar. The complainant produced the copies of the spot memo and notification before the Chief Medical Officer (CMO) along with the letter (Ex.P2), for seeking written consent. CMO issued written consent (Ex.P3) after going through the record. The complainant filed a complaint before the learned Trial Court and intimated the CMO.

2026:HHC:50179

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 16 (1) (a) (ii) of the PFA Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined himself (CW1) and Pradeep Kumar (CW2) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), denied the complainant's case in its entirety. He claimed that witnesses had deposed falsely and a false case was made against him. He did not produce any evidence in his defence.

6. The learned Trial Court held that the statement made by Sunil Kumar that the accused Rajan Kaushal was the proprietor of the shop was believable. The notice was sent to the accused as the proprietor of the shop. He had described himself as the proprietor of the shop in the bail bonds furnished by him and the Power of Attorney executed by him in favour of his Advocate. The accused could not have run a food shop without obtaining a license. CMO had granted the written consent after

going through the record and proper application of mind. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 16 (1) (a) (ii) of the PFA Act and sentenced him to undergo simple imprisonment for three months, pay a fine of ₹ 500/- and, in default of payment of fine, to undergo further simple imprisonment for 15 days for the commission of the aforesaid offence.

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 Sessions Judge, Shimla, District Shimla (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused was the proprietor of the shop. He had described himself as the proprietor in the bail bonds furnished by him and the power of attorney executed in favour of his advocate. The learned Trial Court had rightly convicted and sentenced the accused. There was no infirmity in the judgment and order passed by the learned Trial Court; hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the petitioner/accused has preferred

2026:HHC:50179

the present revision, asserting that the learned Courts below erred in appreciating the material placed before them. The spot memo prepared by the complainant did not establish that the name of the accused was disclosed to be the proprietor of the shop at the time of the inspection. This fact was included for the first time in the application filed for seeking the written consent. The accused was not afforded a chance to explain the bail bonds and the power of attorney executed by him, and they could not have been used against the accused. The written consent was given without due application of mind. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Ajay Kochhar, learned Senior Advocate, assisted by Ms Swati Sharma, learned counsel for the petitioner/accused, and Mr Tarun Pathak, learned Deputy Advocate General, for the respondent/State.

10. Mr Ajay Kochhar, learned Senior Advocate for the petitioner/accused, submitted that the learned Courts below erred in convicting and sentencing the accused. The complainant had not mentioned in the spot memo prepared by him that the

2026:HHC:50179

accused was disclosed to be the owner of the shop by the co-accused. The bail bonds and Power of Attorney furnished by the accused were not put to the accused in his statement recorded under section 313 of the CrPC and could not have been used against the accused. The learned Courts below erred in considering these documents to convict the accused. Therefore, he prayed that the 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 petitioner/accused had himself described to be the owner of the shop in the documents submitted by him to the learned Trial Court. A fact admitted is not to be proved and there is no infirmity in the judgments and order passed by the learned Courts below. This Court should not re-appreciate the evidence while deciding the revision; 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:
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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.
> >
> > *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.

2026:HHC:50179

> (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

2026:HHC:50179

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.
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> 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.

2026:HHC:50179

> 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 complainant stated that he had prepared the spot memo (Ex.P1) on the spot after the inspection. The spot memo does not mention that the co-accused Sunil Kumar had described the present accused, Rajan Kaushal, as the proprietor of the shop. The complainant has not provided any explanation for omitting the name of the accused Rajan Kaushal from the spot memo, and his testimony in the Court that co-accused Sunil Kumar had disclosed that Rajan Kaushal was the proprietor of the shop is doubtful. The complainant admitted in his cross-examination that he had not obtained any document showing the accused Rajan Kaushal to be the proprietor of the shop. Thus, there is no independent corroboration to his testimony that Rajan Kaushal is the proprietor of the shop.

2026:HHC:50179

16. The learned Trial Court had put to the accused Rajan Kaushal, in his statement recorded under Section 313 of the CrPC, that he was conducting the business of the shop as a proprietor and that he was running a shop without obtaining the license. No question was put to the accused that co-accused Sunil Kumar had disclosed the name of the present accused Rajan Kaushal as the proprietor of the shop. Similarly, it was not put to him that he had described himself to be the proprietor of the shop and that this was an incriminating circumstance against him. It was laid down by the Hon'ble Supreme Court in ***Vandana v. State of Maharashtra, 2025 SCC OnLine SC 1954,*** that it is impermissible to rely upon a circumstance not put to the accused in his statement recorded under Section 313 of the CrPC. It was observed:

> **12.** Fourthly, we also found observations of non-compliance with Section 313 CrPC. It is found that several incriminating circumstances were put to the appellant in compound and omnibus questions as recorded by the appellate court. This court has consistently held, and we reiterate, that Section 313 is not an empty formality. Where there is failure to put material circumstances fairly and distinctly, it causes prejudice and vitiates reliance placed on such circumstances. The said defect strikes at a valuable statutory right of defence of the accused. In the present case, it is on record that the accused was not possibly able to understand the incriminating circumstances put against her and was not able to answer properly because of the compound questions.

> Nevertheless, the courts have relied upon the statement which, in our considered view, causes prejudice to the accused.

17. It was held in ***Chandan Pasi v. State of Bihar, 2025 SCC OnLine SC 2599*** that the statement of the accused recorded under section 313 of the CrPC is not an empty formality but is meant to provide an opportunity to the accused to explain the circumstances against him. It was observed:

> **7.** This Court, in many judgments, delineated the scope and object of Section 313 CrPC. The position is no longer up for debate. Even so, we may refer to certain pronouncements for the sake of completeness.
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> **7.1.** In ***Sanatan Naskar* v. *State of W.B. (2010) 8 SCC 249***, this Court as follows, regarding the scope of the examination under Section 313 CrPC:
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> > "**21.** The answers by an accused under Section 313 CrPC are relevant for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 CrPC is wide and is not a mere formality. ...
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> > 22. *As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution.* At the same time, it also permits him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused, but only after the prosecution's evidence has been concluded. *It is a mandatory obligation upon the court and, besides ensuring compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct.* The option lies with the accused to maintain

silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of the crime. This is the statement which the accused makes without fear or the right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders as may be called for in accordance with law. *The primary purpose is to establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. …"* (emphasis supplied)

7.2. In ***Indrakunwar v. State of Chhattisgarh 2023 SCC OnLine SC 1364***, this Court, through one of us (Sanjay Karol, J.), after consideration of various judgments, formulated the following principles vis-à-vis this Section:

"**35.** A perusal of various judgments rendered by this Court reveals the following principles, as evolved when considering such statements.

35.1 The object, evident from the Section itself, is to enable the accused to explain to themselves any circumstances appearing in the evidence against them.

35.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

35.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alteram partem.

35.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

35.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance

or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

35.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

35.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8 This statement is to be read as a whole. One part cannot be read in isolation.

35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect, as may be borne out from the statement, may be used to lend credence to the case of the prosecution.

35.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

35.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinised and considered.

35.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision."

7.3. In ***Raj Kumar v. State (NCT of Delhi) (2023) 17 SCC 95,*** as subsequently approved by a bench of three judges in ***Aejaz Ahmad Sheikh v. State of U.P. 2025 SCC OnLine SC 913***, the Court laid down the following factors:

2026:HHC:50179

"**22.** The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctly and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313 CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

[See also: ***Ranvir Yadav v. State of Bihar (2009) 6 SCC 595*** and ***Naresh Kumar v. State of Delhi) 2024 SCC OnLine SC 1641***]

18. Therefore, the learned Courts below erred in relying upon the circumstances not put to the accused in his statement recorded under section 313 of the CrPC to convict and sentence the accused. Hence, the judgments and order passed by the learned Courts below cannot be sustained.

19. In view of the above, the present revision petition is allowed and the judgment and order dated 27.07.2011 passed by the learned Trial Court, as affirmed by the learned Appellate Court vide judgment dated 31.07.2015 are ordered to be set aside. The accused is acquitted of the commission of an offence punishable under Section 16 (1) (a) (ii) of the PFA Act. The fine amount, 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.

20. 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 his personal bond in the sum of ₹25,000/-

2026:HHC:50179

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(s) thereof, shall appear before the Hon'ble Supreme Court.

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

(Rakesh Kainthla)
Judge

20th November, 2026
(Nikita)