IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMMO No. 773 of 2026

Reserved on: 08.10.2026

Date of Decision: 26.10.2026

Gandhir Singh & another .... Petitioners

Versus

State of H.P. & others .... Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No.

For the Petitioners	:	Mr Tejasvi Verma, Advocate.
For the respondent/State	:	Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioners have filed the present petition against the judgment dated 05.05.2026, passed by learned Additional Sessions Judge, Kinnaur at Rampur Bushehar (learned Revisional Court), vide which order dated 04.12.2024, passed by learned

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

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Judicial Magistrate First Class, Anni, District Kullu, H.P. (learned trial Court), was upheld. (*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 petition are that the complainants filed a petition under Section 156(3) of the Code of Criminal Procedure (CrPC) to direct the police to register an FIR. It was asserted that complainant no. 2, Pawan Kumar, was subjected to illegal confinement, captivity, assault and torture on 14.07.2021. The complainant no. 1 came to know about this fact, and he filed an application with the police to register an FIR against the accused. The police made an entry in the general diary, but did not register the FIR. Hence, it was prayed that the police be directed to register the FIR.

3. Learned trial Court held on 10.01.2023 that it would be appropriate to treat the application as a private complaint. Hence, the complainant was directed to produce the evidence. The complainant examined Roshna Devi (CW-1) and complainant no. 1 (CW2).

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4. Learned trial Court held that Roshna Devi (CW-1) and Complainant No. 1 (CW-2) were not eyewitnesses. Complainant No. 2 was not examined as a witness before the Court. An FIR was registered against Complainant No. 2 on 14.07.2021, and the report submitted by the police that the present complaint was filed as a counterblast to the FIR registered against Complainant No. 2 was probable. There was no ground to summon the accused. Hence, the complaint was dismissed.

5. Being aggrieved by the order passed by the learned trial Court, the complainants filed a revision, which was decided by the learned Additional Sessions Judge, Kinnuar at Rampur Bushehar, District Shimla, H.P. (learned revisional Court). The learned revisional Court held that once the Court had treated the petition as a private complaint, it was incumbent upon the complainants to produce evidence to substantiate their allegations. The learned trial Court had rightly held that there was insufficient material to proceed against the accused. There was no infirmity in the order passed by the learned trial Court. Hence, the revision was dismissed.

6. Being aggrieved by the judgment and order passed by the learned Courts below, the complainant has filed the present petition asserting that the learned trial Court erred in converting the petition into a private complaint and holding that no credible evidence was brought to justify the summoning of the accused. The learned revisional Court failed to rectify the error committed by the learned Trial Court; therefore, it was prayed that the present petition be allowed and the judgment and order passed by the learned Courts below be set aside.

7. I have heard Mr Tejasvi Verma, learned counsel for the petitioners/complainants and Mr Jitender Sharma, learned Additional Advocate General, for the respondents/State.

8. Mr Tejasvi Verma, learned counsel for the petitioners/complainants, submitted that the complainants had filed a petition to register an FIR against the accused. However, the learned trial Court had treated the petition as a private complaint without any justification. The learned trial Court had also not properly appreciated the evidence on record. Therefore, he prayed that the present petition be allowed, and the judgment and order passed by the learned courts below be set aside.

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9. Mr Jitender Sharma, learned Additional Advocate General, for the respondent/State submitted that the order passed by the learned trial Court that the petition would be treated as a private complaint was never assailed by the complainants, and it is not permissible to assail this order after such a long lapse of time. The complainant No. 2 failed to appear before the Court, and Roshana Devi (CW-1) and Complainant No. 1 (CW-2) were not the eyewitnesses to the incident. The learned trial Court was justified in holding that there was no material to summon the accused. Therefore, he prayed that the present petition be dismissed.

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

11. It is undisputed that the petitioner had filed a revision before the learned Revisional Court, which was dismissed by the learned Revisional Court. It was laid down by the Hon'ble Supreme Court in ***Krishnan Vs. Krishnaveni (1997) 4 SCC 241,*** that the High Court can intervene under Section 482 of CrPC (corresponding to Section 528 of BNSS) when there is a grave miscarriage of justice or abuse of the process of the Court. It was observed:

> "**10.** Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant —

cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has *suo motu* power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court, on examination of the record, finds that there is a grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with, or there is failure of justice, or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and, in an appropriate case, even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of a criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed, and public justice can be ensured only when the trial is conducted expeditiously.

11. In ***Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551: 1978 SCC (Cri) 10],*** a three-judge Bench was to consider the scope of the power of the High Court under Section 482 and Section 397(2) of the Code. This Court held that the bar on the power of revision was put to facilitate expedient disposal of the cases, but in Section 482, it is provided that nothing in the Code, which would include Section 397(2) also, shall be deemed to limit or affect the inherent powers

of the High Court. On a harmonious construction of the said two provisions on this behalf, it was held that though the High Court has no power of revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the aggrieved party. In that case, when allegations of defamatory statements were published in the newspapers against the Law Minister, the State Government decided to prosecute the appellant for an offence under Section 500 IPC. After obtaining the sanction, on a complaint made by the public prosecutor, cognisance of the commission of the offence by the appellant was taken to trial in the Sessions Court. Thereafter, the appellant filed an application to dismiss the complaint on the ground that the court had no jurisdiction to entertain the complaint. The Sessions Judge rejected all the contentions and framed the charges under Section 406. The Order of the Sessions Judge was challenged in revision in the High Court. On a preliminary objection raised on maintainability, this Court held that the power of the High Court to entertain the revision was not taken away under Section 397 or the inherent power under Section 482 of the Code.

12. In ***V.C. Shukla v. State through CBI [1980 Supp SCC 92: 1980 SCC (Cri) 695: (1980) 2 SCR 380]*** (SCR at p. 393), a four-judge Bench per majority held that sub-section (3) of Section 397, however, does not limit at all the inherent powers of the High Court contained in Section 482. It merely curbs the revisional power given to the High Court or the Sessions Court under Section 397(1) of the Code. In the ***Rajan Kumar Machananda case [1990 Supp SCC 132: 1990 SCC (Cri) 537],*** the case related to the release of a truck from attachment, obviously on the filing of an interlocutory application. It was contended that there was a prohibition on the revision by operation of Section 397(2) of the Code. In that context, it was held that it was not reviewable under Section 482 in the exercise of inherent powers by operation of sub-section (3) of Section 397. On the facts in that case, it was held that by provisions contained in Section 397(3), the revision is

not maintainable. In the ***Dharampal case [(1993) 1 SCC 435: 1993 SCC (Cri) 333],*** which related to the exercise of power to issue an order of attachment under Section 146 of the Code, it was held that the inherent power under Section 482 was prohibited. On the facts, in that case, it could be said that the learned Judges would be justified in holding that it was not revisable since it was a prohibitory interim order of attachment covered under Section 397(2) of the Code but the observations of the learned Judges that the High Court had no power under Section 482 of the Code were not correct in view of the ratio of this Court in ***Madhu Limaye case [(1977) 4 SCC 551: 1978 SCC (Cri) 10***] as upheld in ***V.C. Shukla case [1980 Supp SCC 92: 1980 SCC (Cri) 695 : (1980) 2 SCR 380]*** and also in view of our observations stated earlier. The ratio in the ***Deepti case [(1995) 5 SCC 751: 1995 SCC (Cri) 1020]*** is also not apposite to the facts in the present case. To the contrary, in that case, an application for discharge of the accused was filed in the Court of the Magistrate for an offence under Section 498-A IPC. The learned Magistrate and the Sessions Judge dismissed the petition. In the revision at the instance of the accused, on a wrong concession made by the counsel appearing for the State that the record did not contain allegations constituting the offence under Section 498-A, the High Court, without applying its mind, had discharged the accused. On appeal, this Court, after going through the record, noted that the concession made by the counsel was wrong. The record did contain the allegations to prove the charge under Section 498-A IPC. The High Court, since it failed to apply its mind, had committed an error of law in discharging the accused, leading to the miscarriage of justice. In that context, this Court held that the order of the Sessions Judge operated as a bar to entertaining the application under Section 482 of the Code. In view of the fact that the order of the High Court had led to the miscarriage of justice, this Court had set aside the order of the High Court and confirmed that of the Magistrate.

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> **13.** The ratio of the ***Simrikhia case [(1990) 2 SCC 437: 1990 SCC (Cri) 327]*** has no application to the facts in this case. Therein, on a private complaint filed under Sections 452 and 323 IPC, the Judicial Magistrate, First Class, had taken cognisance of the offence. He transferred the case for inquiry under Section 202 of the Code to the Second-Class Magistrate, who, after examining the witnesses, issued a process to the accused. The High Court, exercising the power under Section 482, dismissed the revision. But subsequently, on an application filed under Section 482 of the Code, the High Court corrected it. The question was whether the High Court was right in reviewing its order. In that factual backdrop, this Court held that the High Court could not exercise inherent power for the second time. The ratio therein, as stated above, has no application to the facts in this case.
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> **14.** In view of the above discussion, we hold that though the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, the inherent power of the High Court is still available under Section 482 of the Code and, as it is a paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for a decision on the merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the context of the revisional power under Section 397(1) read with Section 397(3) and the inherent powers. We do not find any justification warranting interference in the appeal."

12. This position was reiterated in ***Rajinder Prasad v. Bashir, (2001) 8 SCC 522***, wherein it was held:

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> "...though the power of the High Court under Section 482 of the Code is very wide, the same must be exercised sparingly and cautiously, particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been a failure of justice or misuse of judicial mechanism or procedure, or that a sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held, "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code."

13. A similar view was taken in ***Kailash Verma v. Punjab State Civil Supplies Corporation, (2005) 2 SCC 571***, and it was held:

> "5. It may also be noticed that this Court in ***Rajathi v. C. Ganesan [(1999) 6 SCC 326: 1999 SCC (Cri) 1118]*** said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code, as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is a serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of the law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court."

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14. This position was reiterated in ***Shakuntala Devi v. Chamru Mahto*, *(2009) 3 SCC 310: (2009) 2 SCC (Cri) 8: 2009 SCC OnLine SC 292*,** wherein it was observed: -

> **"24.** It is well settled that the object of the introduction of sub-section (3) in Section 397 was to prevent a second revision to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed, and in special cases, the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482 was not subject to the prohibition under sub-section (3) of Section 397 of the Code and was capable of being invoked in appropriate cases. Mr Sanyal's contention that there was a complete bar under Section 397(3) of the Code, debarring the High Court from entertaining an application under Section 482 thereof, does not, therefore, commend itself to us.
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> **25.** On the factual aspect, the Magistrate came to a finding that the appellants were entitled to possession of the disputed plot. It is true that while making such a declaration under Section 145(4) of the Code, the Magistrate could have also directed that the appellants be put in possession of the same.
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> **26.** The question which is now required to be considered is whether the High Court was right in quashing the order passed by the Magistrate, which was confirmed by the Sessions Judge, on the ground that the application made by the appellants under Section 145(6) of the Code was barred firstly by limitation under Article 137 of the Limitation Act and also by virtue of Section 6 of the Specific Relief Act, 1963.

15. Delhi High Court also took a similar view in ***Surender Kumar Jain v. State, ILR (2012) 3 Del 99*** and held: —

> "5. The issue regarding the filing of a petition before the High Court after having availed the first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying down that section 397(3) Cr. P.C. laid the statutory bar to the second revision petition, the courts have held that the High Court did enjoy inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in those cases. But that power was to be exercised sparingly and with great caution, particularly when the person approaching the High Court has already availed a remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved by the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before the Sessions Court. It all depends not only on the facts and circumstances of each case but also on whether the impugned order brought about a situation that is an abuse of the process of the court, there was a serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court i*n **Madhu Limave v. State of Maharashtra (1977) 4 SCC 551, State of Orissa v. Ram Chander Aggarwal, (1979) 2 SCC 305: AIR 1979 SC 87, Rai Kapoor v. State (Delhi Administration) 1980 Cri LJ 202, Krishnan v. Krishnaveni** and **Kailash Verma v. Punjab State Civil Supplies Corporation (2005) 2 SCC 571.**"*

16. It is apparent from the judgments that the High Court has a limited jurisdiction, and it can rectify a serious miscarriage of justice or a breach of a mandatory provision of law while exercising its jurisdiction under Section 528 of BNSS corresponding to Section 482 of CrPC.

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17. The learned trial Court had ordered on 10.01.2023 that, keeping in view the contents of the application and the reply of the State, it would be appropriate to treat the petition as a private complaint. The complainants produced the evidence before the learned trial Court and never assailed this order. Therefore, it is impermissible to assail this order after such a long lapse of time. Further, the State has submitted a status report to the learned trial Court stating that the injuries sustained by complainant no. 2 were simple, and a false complaint was made by the complainants to save complainant no. 2. Therefore, the police had already concluded that the complaint made by the complainants was false, and no fruitful purpose would have been served by directing the police to carry out the investigation. Hence, the learned trial Court was justified in treating the petition as a private complaint.

18. The complainant no. 1 made a complaint (Ext.C-1) to the police, stating that complainant no. 1 had gone to Rampur and Complainant No. 2 had disclosed the facts to Roshna Devi (CW-1). This report nowhere mentioned that Roshna Devi or Complainant No.1 had witnessed the incident.

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19. The complainant No. 2 never appeared before the Court to narrate the incident. Roshana Devi (CW-1) stated that she was informed by Pawan Kumar that he was being beaten. She went to the spot and saw that the accused had confined complainant No. 2 in a room and were beating him. Thus, Roshana Devi has introduced herself as an eyewitness when she was not mentioned as an eyewitness in the earliest report made to the police, and the learned Trial Court was justified in holding that the statements of Roshana Devi and complainant No. 1 were not sufficient to summon the accused.

20. It was laid down by the Hon'ble Supreme Court in ***Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400***, that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set in motion by examining the complainant and two witnesses on oath. It was observed at page 80:

> **28.** Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of

> allegations made in the complaint and the evidence, both oral and documentary, in support thereof and whether that be sufficient for the complainant to succeed in bringing the charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

21. Therefore, the submission that the learned trial Court should have summoned the accused based on the evidence led before him without looking into the attending circumstances cannot be accepted. It was laid down by the Bombay High Court in ***Gulam Mohd. Kabir Mohd. Mir v. State of Maharashtra*, *2008 SCC OnLine Bom 1257: 2008 Cri LJ 2426,*** that the magistrate has to see the inherent improbabilities of the prosecution's case at the time of summoning of the accused. It was observed at page 2432:

> **23.** Section 204 falls in Chapter XVI of the Code. This Chapter relates to commencement of proceedings before a Magistrate. At the time of issuing process, what the Magistrate is required to find out is whether there is a prima facie case for issuance of process. The Magistrate has to take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. In other words, the Magistrate has to apply his judicial mind to find out whether an offence under the provisions of I.P.C. has been spelt out prima facie or not. Having seen the

> nature of the judicial function the Magistrate is required to discharge, one can safely equate this inquiry under Section 167(2) of Cr. P.C. with that contemplated under Section 207 of Cr. P.C. This inquiry by no stretch of imagination can be said to be administrative. It is nothing but a judicial inquiry requiring application of judicial mind.

22. Thus, the Learned Magistrate was required to satisfy himself regarding the *prima facie* correctness of the allegation before summoning the accused.

23. It was laid down by this Court in ***Khan Mohammad v. Talib Hussain*, *1994 SCC OnLine HP 44: 1995 Cri LJ 1401*** that a Magistrate has to satisfy himself that the evidence led before him is worthy of some credit. It was observed at page 1402:

> **6**.....The principle laid down in the above said cases is that the object of examination of the complainant and his witnesses under Section 200 of the Code is to ascertain whether there is a prima facie case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided, therefore, to find out whether there are or are not sufficient grounds for proceeding. If, in the opinion of the Magistrate concerned, there is no sufficient cause for proceeding, he may, for reasons to be recorded briefly, dismiss the complaint; if, on the contrary, the Magistrate taking cognisance of the offence is of the opinion that there is sufficient cause for proceeding. He should issue process against the accused in accordance with Section 204 of the Code. It may be that the evidence which is required to be adduced by the complainant at that stage may not be sufficient for recording a finding of conviction, but that fact would not absolve the complainant who wants

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> the Magistrate to issue a process against the accused person from leading some credible evidence, as may prima facie show the commission of the offence. The words "sufficient grounds" used in Section 203 and Section 209 of the Code have been construed to mean the satisfaction that a prima facie case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit and not sufficient ground for the purpose of conviction.

24. In the present case, the complainants had failed to produce satisfactory evidence before the learned trial Court justifying the summoning of the accused and the learned trial Court had rightly refused to summon the accused. There is no infirmity in the order passed by the learned trial Court justifying the exercise of inherent jurisdiction.

25. In view of the above, the present petition fails and is dismissed, so also the pending applications, if any.

26. The record of the learned Courts below be returned with a copy of the judgment.

(Rakesh Kainthla)
Judge.

26th October, 2026.
(Ravinder)