



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Cr. Appeal No. 57 of 2012

Date of decision: 11th September, 2026

Uploaded on 11th September, 2026

Rangi Lal and another

... Appellants

Versus

State of HP

...Respondents.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting? Yes.

For the appellant:

***Ms. Devyani Sharma, Sr. Advocate with
Mr. Anirudh Sharma, Advocate.***

For the Respondent:

Mr. Raj Negi, Deputy Advocate General.

Vivek Singh Thakur, Judge (Oral)

This matter has been listed before this Division Bench, as directed by Hon'ble the Chief Justice, for answering the reference made by the Single Bench vide order dated 3.11.2025.

2 Question framed to be answered in Reference is as under:-

“Whether an appeal is maintainable to the High Court by a person who has been

convicted by a Sessions Court in an appeal against acquittal?"

3 The identical issue has been considered and answered vide order dated 30th July, 2026 by the Apex Court in ***Crl.A. No.003531-003531-2026 (arising out of SLP(Crl.) No. 13891 of 20225), titled Vishnu Kumar Gupta vs. State of Madhya Pradesh and another***, reported in **2026 INSC 770**.

4 The relevant paras of aforesaid judgment of the Apex Court are as under:-

"2. The Appellant/Accused is before this Court challenging the judgment/order of the High Court of Madhya Pradesh at Gwalior Bench dated 11.07.2025 in Criminal Appeal No. 54615/2025, wherein the appeal filed by the Accused under Section 415 of Bhartiya Nagarik Suraksha Sanhita, 2023 (Section 374 of the Code of Criminal Procedure, 1973) came to be dismissed on the ground of maintainability.....
.....The question that arises before us in the given factual matrix is 'Whether an appeal under Section 374 of the Code of Criminal Procedure, 1973 (corresponding to Section 415 of the Bhartiya Nagarik Suraksha Sanhita, 2023) is maintainable against a judgment of conviction recorded by a Sessions Court while exercising appellate

jurisdiction and reversing an order of acquittal passed by a Trial Court?

.....

11. Having hearing the learned counsels appearing for the parties and after perusal of the record available, the following question arises for consideration:

I. 'Whether an appeal under Section 374 of the Code of Criminal Procedure, 1973 (corresponding to Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is maintainable against a justice of conviction recorded by a Sessions Court while exercising appellate jurisdiction and reversing an order of acquittal passed by a Trial Court?

VI.3.3.THE REMEDY AVAILABLE TO THE APPELLANT AND TO OTHER PERSONS IN SUCH CASES.

51. Having examined the distinct nature and scope of the powers exercised by the Appellate Court and the Revisional Court, it now becomes necessary to consider the remedy available to the appellant and other persons similarly situated. The contention advanced on behalf of the appellant that the right of appeal against a conviction is a valuable and substantive right is undoubtedly well founded. However, where an appeal of the nature sought to be maintained before the High Court is not contemplated by the statutory framework, this Court cannot, by resorting to judicial interpretation, create such a right. To do so would amount to judicial legislation, which is clearly impermissible.

52. In view of the conclusions recorded hereinabove, the statutory remedy presently available to the appellant is to invoke the revisional jurisdiction of the High Court under Sections 397 and 401 of the Cr.P.C., or the corresponding provisions of the BNSS. The High Court has also reiterated this position by observing that the appellant is at liberty to re-approach it by way of a criminal revision, and that the present appeal is, therefore, not maintainable.

53. The principal apprehension expressed on behalf of the appellant, and shared by other persons similarly situated, is that the revisional jurisdiction of the High Court cannot be equated with its appellate jurisdiction. It is contended that, while an appellate court is empowered to reappreciate the entire evidence, reconsider both questions of fact and law, and rehear the matter on merits, the revisional jurisdiction is comparatively limited and is ordinarily exercised to correct jurisdictional errors, legal infirmities, procedural irregularities, or manifest perversity resulting in a miscarriage of justice. Consequently, although the remedy of revision is undoubtedly available, it cannot be regarded as an effective substitute for a statutory right of appeal. This contention, in our considered view, merits serious consideration, as it is not without substance. The reason for the same is as follows:

53.1. Firstly, there can be no dispute that the appellate jurisdiction of the High Court is qualitatively different from its revisional jurisdiction. While hearing an appeal, the appellate court is vested with the power to undertake a comprehensive re-appreciation of the evidence on record, reassess the findings of fact as well as law, and determine the correctness of the judgment under challenge on its own merits. The appellate court ordinarily issues notice to the respondent, hears the parties, and decides the appeal upon an independent evaluation of the material available on record. The exercise of revisional jurisdiction stands on an entirely different footing from that of appeal. Sections 397 and 401 of the Cr.P.C. The power is discretionary and supervisory in nature, and is ordinarily invoked to correct jurisdictional errors, legal infirmities, procedural irregularities, or findings suffering from manifest perversity resulting in a miscarriage of justice. Unlike an appeal, a revision does not confer upon a litigant an unrestricted right to seek a complete rehearing on facts and law.

53.2. The distinction assumes particular significance in cases of the present nature. An accused who is convicted for the first time by the appellate court is not afforded a statutory right of appeal against such conviction. Consequently, such an accused is left to invoke only the revisional jurisdiction of the High Court, notwithstanding the fact that the conviction has never been subjected to appellate scrutiny at the instance of

the accused. In effect, the accused is deprived of the opportunity to have the conviction examined within the broader ambit of appellate jurisdiction and is instead confined to the comparatively limited scope of revisional jurisdiction.

53.3. It is also pertinent to note that, while an appellate court proceeds to examine the evidence on record as a matter of right in deciding the appeal on merits, a different footing. The High Court exercises such jurisdiction within the limits prescribed by Sections revisional court does not do so in every case. Before embarking upon an examination of the evidence or the merits of the conviction, the High Court must first determine whether the case warrants the exercise of its revisional jurisdiction. Only upon being satisfied that the matter discloses jurisdictional error, legal infirmity, procedural irregularity, manifest perevisional court does not do so in every case. Before embarking upon an examination of the evidence or the merits of the conviction, the High Court must first determine whether the case warrants the exercise of its revisional jurisdiction. Only upon being satisfied that the matter discloses jurisdictional error, legal infirmity, procedural irregularity, manifest perversity, or a miscarriage of justice would the Court ordinarily proceed to interfere. This fundamental distinction underscores that the remedy of revision, though available, is not equivalent in scope or efficacy to a statutory right of appeal.

54. The legislature, keeping in mind the above anomaly has explicitly provided in appropriate cases for the exercise of Appellate jurisdiction by the revisional court under Section 401(1). The aforesaid legislative scheme is neither accidental nor inadvertent. The Code consciously recognizes that, where an accused who has been acquitted by the trial court is convicted for the first time by the appellate court, the absence of a statutory right of appeal may, in an appropriate case, warrant corrective intervention.

It is for this limited purpose that Section 401(1) empowers the High Court, while exercising revisional jurisdiction, to exercise any of the powers conferred on a court of appeal, thereby ensuring that a manifest miscarriage of justice does not remain without an effective remedy.

55. At the same time, the conferment of appellate powers upon the revisional court under Section 401(1) does not obliterate the distinction between an appeal and a revision. The revisional jurisdiction continues to remain supervisory and discretionary in nature and cannot be equated with a statutory appeal. Nevertheless, where the conviction is recorded for the first time by the appellate court upon reversal of an order of acquittal, the High Court is expected to exercise its revisional jurisdiction with greater

circumspection and scrutiny than in cases where the conviction has been concurrently recorded by both the trial court and the appellate court.

56. Such an interpretation harmonizes the statutory framework by preserving the legislative intent of not providing a second appeal, while simultaneously ensuring that an accused is not left remediless against a conviction recorded for the first time by the appellate court. The revisional jurisdiction under Section 401 thus operates as a carefully calibrated safeguard against patent illegality, perversity, or miscarriage of justice in such exceptional situations, without transforming the revision into a regular appellate proceeding.

57. Consequently, although the remedy available to the accused is one of revision and not appeal, the amplitude of the High Court's powers under Section 401(1), read in the context of a first conviction by the appellate court, obliges the High Court to undertake a more searching examination of the correctness, legality and propriety of the conviction than ordinarily it would be warranted in revisions arising from concurrent findings of guilt. Such an approach alone gives meaningful effect to the legislative design underlying Section 401(1) while maintaining the distinction between appellate and revisional jurisdiction.

58. A plain reading of Section 401(3) would indicate that nothing contained in Section 401 shall be deemed to authorise the High Court to convert a finding of acquittal into one of conviction. Significantly, the limitation imposed by sub-section (3) is directed only against the ultimate relief that may be granted in revision and not against the scope of examination that may be undertaken by the revisional court. Thus, while the High Court is prohibited from directly recording a conviction in revision, it is not precluded from scrutinising the evidence in detail to determine whether the acquittal or conviction is legally sustainable. If such scrutiny discloses manifest illegality or perversity, the revisional court may set aside the impugned order and pass such orders as are permissible in law, including ordering a retrial or remanding the matter, while remaining within the statutory limitation contained in Section 401(3).

59. Equally, where the revision is preferred by a convicted person, the revisional court is competent to examine the entire evidentiary record to determine whether the conviction suffers from patent illegality, perversity or a failure of justice. If such examination reveals that the prosecution has failed to establish guilt beyond reasonable doubt or that the conviction is otherwise unsustainable in law, the revisional court is fully empowered to set aside the conviction and acquit

the accused. Thus, although revisional jurisdiction is narrower than appellate jurisdiction, it nevertheless permits an examination of factual issues to the extent necessary to prevent a miscarriage of justice. The restriction contained in Section 401(3) operates only against converting an acquittal into a conviction and does not curtail the revisional court's power to interfere with an erroneous conviction.

60. Having held that the only statutory remedy available to the appellant is to invoke the revisional jurisdiction of the High Court, there being no provision under the Cr.P.C. or the BNSS conferring a right of appeal in such circumstances, we consider it appropriate to observe that revisions arising out of convictions recorded for the first time by an appellate court, upon reversal of an order of acquittal passed by the Trial Court, stand on a distinct footing from revisions arising out of concurrent findings of conviction. The former category of cases warrants a more liberal and careful exercise of the High Court's revisional jurisdiction, bearing in mind that the accused has not had the benefit of a statutory appeal against the conviction. In such cases, the High Courts may appropriately adopt a more liberal approach while exercising the revisional jurisdiction vested in them and, where the facts and circumstances so warrant, invoke the power conferred under Section 401(1) of the Cr.P.C., or the corresponding provision

of the BNSS, to exercise any of the powers conferred upon an appellate court, subject always to the well-settled principles governing the exercise of revisional jurisdiction.”

5 In the aforesaid judgment, question has been answered by the Apex Court in following terms:-

“VII CONCLUSION

61. Thus, from the above discussion, the question framed is answered in negative i.e. an appeal under Section 374 of the Code of Criminal Procedure, 1973 (corresponding to Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is not maintainable against a judgment of conviction recorded by a Sessions Court while exercising appellate jurisdiction and reversing an order of acquittal passed by a Trial Court. The only remedy which is available, is that of filing a revision under Section 397 r/w 401 (corresponding to Section 438 r/w 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023).”

6 In view of above exposition of law, propounded by the Apex Court with regard to the same issue, no further discussion is required to answer this reference except observing that appeal is not maintainable to the High Court by a person, who has been convicted by the Sessions Court in an appeal against acquittal and only remedy available with such person is

of filing a Revision Petition under Section 438 read with Section 442 of Bharatiya Nagarik Suraksha Sanhita, 2023 (earlier Section 397 read with Section 401 of Cr.P.C.) and such Revision Petition has to be adjudicated by the High Court in terms of observations and findings returned by the Supreme Court in ***Vishnu Gupta's case*** under heading **"VI. THE REMEDY AVAILABLE TO THE APPELLANT AND TO OTHER PERSONS IN SUCH CASES"** from paras 51 to 60, referred supra.

7 In view of the law settled by the Apex Court, the judgment of the High Court, being contrary to and in conflict with the law so settled, is not a good law and has to be ignored.

8. The reference is answered in aforesaid terms.

As matter pertains to the year 2012, the same be listed before the appropriate Bench subject to approval and at the pleasure of Hon'ble the Chief Justice during the week commencing from 28.9.2026.

**(Vivek Singh Thakur),
Judge.**

**(Bhupesh Sharma),
Judge.**

11th September, 2026
(ms)