IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 78 of 2015
Reserved on: 17.9.2026
Date of Decision: 29.9.2026.

Ashok Kumar ...Petitioner

Versus

State of HP ...Respondent

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

For the Petitioner : Ms Shivani, Advocate, vice Mr. Ashwani Sharma, Advocate.

For the Respondent/State : Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 26.2.2015 passed by the learned Sessions Judge, Hamirpur, vide which the judgment of conviction and order of sentence dated 27.2.2012 passed by the learned Judicial Magistrate First Class, Court No. 2, Hamirpur (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

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

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2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan before the learned Trial Court for the commission of offences punishable under Sections 341, 354, and 506 of the Indian Penal Code (IPC). It was asserted that the informant (the name being withheld to protect her identity) was studying in class 9th. She was going to school with her friends on 15.10.2011. When she reached Barog Nala at about 8:00 AM, one person came from the opposite side. He stopped the informant, caught hold of the informant's face and tried to kiss her. The informant's friends ran away from the spot. The informant saved herself and also started running. The person ran after her. Some boys were going to the school; the informant shouted for help. The school boys and the villagers caught hold of the person and gave him beatings. They brought the person to the school. The person revealed his name as Ashok Sharma. The matter was reported to the police. The police recorded the informant's statement (Ext.PW-2/A) and sent it to the Police Station, where FIR (Ext.PW-8/B) was registered. HC Ram Kumar visited the spot and prepared the site plan (Ext.PW-8/A). He recorded the statements of witnesses as per their version. After the completion of the investigation, the

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challan was prepared and presented before the learned Trial Court.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of offences punishable under Sections 341, 354, and 506 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 10 witnesses to prove its case. The informant's mother (PW-1) was told about the incident. The informant (PW-2) narrated the incident. The informant's friend (PW-3) witnessed the incident. Subhash Chand (PW-4) and Pawan Sharma (PW-5) apprehended the accused. Ravinder Patial (PW-6) and Vijay Singh (PW-7) were told about the incident. HC Ram Kumar (PW-8) and ASI Karan Singh (PW-9) investigated the matter. Raghujeet Singh (PW-10) proved the entries in the daily diaries and signed the FIR.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.PC), admitted that he was arrested and his personal search was conducted. He stated

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that he was innocent and was falsely implicated. He examined Kashmir Singh (DW-1) in his defence.

6. The learned Trial Court held that the statements of the prosecution witnesses corroborated each other. It was duly proved on record that the accused had restrained the informant, caught hold of her mouth, and tried to kiss her. He threatened the informant to kill her in case the incident was narrated to any person. There was no reason as to why the informant and other witnesses would depose against the accused. Hence, the learned Trial Court convicted and sentenced the accused as under:

Sections	Sentence
Section 341 of IPC	To undergo simple imprisonment for three months, pay a fine of ₹500/- and in default of payment of fine, to undergo simple imprisonment for 15 days.
Section 354 of IPC	To undergo simple imprisonment for three months, pay a fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for 15 days.
Section 506 of IPC	To undergo simple imprisonment for three months, pay a fine of ₹500/- and in default of payment of fine, to undergo simple

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	imprisonment for 15 days.
All the substantive sentences of imprisonment were ordered to run concurrently.	

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, Hamirpur (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the statements of the prosecution witnesses corroborated each other. The prosecution witnesses had no reason to depose against the accused. The learned Trial Court had rightly convicted the accused. However, the sentence imposed by the learned Trial Court was excessive; hence, it was modified as under:

Sections	Sentence
Section 341 of IPC	To undergo simple imprisonment for two months, pay a fine of ₹500/- and in default of payment of fine, to undergo simple imprisonment for 15 days.
Section 354 of IPC	To undergo simple imprisonment for two months, pay a fine of ₹1,000/- and in default of payment of fine, to undergo

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	simple imprisonment for 15 days.
Section 506 of IPC	To undergo simple imprisonment for two months, pay a fine of ₹500/- and in default of payment of fine, to undergo simple imprisonment for 15 days.
All the substantive sentences of imprisonment were ordered to run concurrently.	

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in appreciating the evidence on record. The prosecution witnesses were interested, and the informant's testimony was not reliable. 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 Ms Shivani, learned counsel representing the petitioner, and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

10. Ms Shivani, learned counsel for the petitioner/accused, submitted that the accused was not proved to be the person who had restrained and molested the informant.

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There was a discrepancy in the evidence regarding the apprehension of the accused. Therefore, she prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Jitender Sharma, learned Additional Advocate General for the respondent/State, submitted that the prosecution witnesses corroborated the statements of each other in material particulars. There is nothing in their cross-examination to show that they were making false statements. The learned Courts below had properly appreciated the evidence and this Court should not re-appreciate the evidence. Therefore, 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

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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:

> **"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.
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> (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

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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 the ***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***

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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 reappreciate 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.

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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 ***Sanjabij 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 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. 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

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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 statement (Ext.PW-1/A) mentions that the person ran after the informant. Some school boys were moving ahead. The informant shouted. The school boys and the villagers caught hold of that person. The informant (PW-2) stated that she shouted for help. Villagers and school boys were going ahead. They enquired as to what happened. They caught hold of the person and brought him to the school. The informant's friend also stated that the informant saved herself from that person. School boys were going ahead, and the informant narrated the incident to them. They caught hold of that person. Thus, according to the initial version and the testimonies of the informant and her friend, the person was apprehended on the spot by the school boys and the villagers.

16. Subhash Chand (PW-4) stated that a girl was crying. When he enquired the reason, she did not say anything. The girls accompanying her revealed that some person had teased the informant. Thereafter, they went to the village and caught hold

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of the person from the village. Pawan Sharma (PW-5) stated that one girl was crying. When he enquired from the girl, she did not say anything; however, the girl accompanying the victim said that one person, who had run away from the spot, had teased the informant. The person was apprehended in the village.

17. Thus, as per the statements of Subhash and Pawan, the person was not apprehended on the spot, but was apprehended in the village after it was revealed that he had teased the informant. There is no evidence to show how Subhash and Pawan could have known about the person who had teased the informant. Therefore, there is force in the submission of learned counsel for the petitioner that the identity of the accused as the person who had teased the informant was not established.

18. It was submitted that the informant and her friend had identified the accused as the person in the Court, and there can be no question of identification. This submission will not help the prosecution. There is no evidence that the person was known to the informant and her friend. They had seen him for the first time at the time of the incident. The police had not conducted any test identification parade in the present case.

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Professor Rupert Cross has stated in his celebrated treatise, ***Cross on Evidence***, Fifth Edition, Butterworths, that identification of the accused for the first time in the dock is highly suspect. He observed:

> "It might be thought that in criminal cases there could not be better identification of an accused than that of a witness who goes into the box and swears that the man in the dock is the one he saw coming out of a house at a particular time, or the man who assaulted him. Nevertheless, such evidence is suspect where there has been no previous identification of the accused by the witness, and this is because its weight is reduced by the reflection that, if there is any degree of resemblance between the man in the dock and the person previously seen by him. The witness may very well think to himself that the police must have got hold of the right person, particularly if he has already described the latter to them, with the result that he will be inclined to swear positively to a fact of which he is by no means certain.
>
> People have mistakenly identified friends and relations well known to them with sufficient frequency to make them question the propriety of convicting an accused person on nothing more than the visual identification of a single witness who may only have had a fleeting glance of him in poor light."

19. It has been stated in ***Halsbury's Laws of England 4th Edition Volume*** 2 that the identification of the accused for the first time in the Court is improper and the witness should be asked to identify the accused in a prior test identification parade. It has been observed in para 363:

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> "A witness shouldn't be asked to identify the defendant for the first time in the dock at his trial; and as a general practice, it is preferable that he should have been placed previously in a parade with other persons, so that potential witnesses may be asked to pick him up."

20. It was laid down by the Hon'ble Supreme Court in ***P. Sasikumar v. State of T.N., (2024) 8 SCC 600; (2024) 3 SCC (Cri) 791: 2024 SCC OnLine SC 1652*** that when the accused were not known to the witnesses on the date of the incident, their identification in the dock is not acceptable. It was observed on page 605:

> "**17.** The admitted position in this case is that the test identification parade (hereinafter referred to as "TIP") was not conducted. All the prosecution witnesses who identified the accused in the Court, such as PW 1 and PW 5, were not known to the present appellant, i.e. Accused 2. They had not seen the present appellant before the said incident. He was a stranger to both of them. More importantly, both of them have seen the appellant/Accused 2 on the date of the crime while he was wearing a "green-coloured monkey cap"!
>
> **xxx**
>
> **21.**It is well settled that TIP is only a part of the police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence, is only dock identification, that is, identification made by a witness in court during the trial. This identification has been made in court by PW 1 and PW 5. The High Court rightly dismissed the identification made by PW 1 for the reason that the appellant, i.e. Accused 2, was a stranger to PW 1 and PW 1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP, to admit

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the identification by PW 1 made for the first time in the court was not proper.

xxxx

23. We are afraid the High Court has gone completely wrong in believing the testimony of PW 5 as to the identification of the appellant. In cases where the accused is a stranger to a witness, and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (see: ***Kunjumon v. State of Kerala***, (***2012) 13 SCC 750: (2012) 4 SCC (Cri) 406***).

xxx

27. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP, which has not been done. The emphasis of TIP in a given case is of vital importance, as has been shown by this Court in the recent two cases of ***Jayanv. State of Kerala, (2021) 20 SCC 38*** and ***Amrik Singh v. State of Punjab, (2022) 9 SCC 402: (2023) 2 SCC (Cri) 404***.

28. In ***Jayan v. State of Kerala, (2021) 20 SCC 38***, this Court disbelieved the dock identification of the accused therein by a witness, and while doing so, this Court discussed the aspect of TIP in the following words: (***Jayan v. State of Kerala, (2021) 20 SCC 38***, SCC p. 44, para 18)

"*18.* It is well settled that the TI parade is a part of the investigation, and it is not substantive evidence. The question of holding a TI parade arises when the accused is not known to the witness beforehand. The identification by a witness of the accused in the Court who has, for the first time, seen the accused in the incident of the offence is a weak piece of evidence, especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, the TI parade may make the identification of the accused by the witness before the Court trustworthy."

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21. Therefore, the identification of the accused by the witnesses for the first time in the Court without any corroboration from previous Test Identification Parades is meaningless, and cannot be relied upon to record the conviction.

22. Subhash Chand (PW-4) and Pawan Sharma (PW-5) stated that the accused had acknowledged his fault and had pleaded for mercy. However, this fact was not mentioned in the FIR, and cannot be accepted.

23. Ravinder Patial (PW-6) and Vijay Singh (PW-7) stated that the villagers had brought the accused to the school. They specifically stated in their cross-examination that the incident had not taken place in their presence and they did not have any personal acquaintance with the accused. Therefore, they could not have established the identity of the accused.

24. The learned Courts below did not advert to the question of identification, which was highly material in the present case, and proceeded as if the identity was undisputed. Therefore, the judgments and order passed by the learned Courts below cannot be sustained.

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25. In view of the above, the present revision is allowed. The judgments and order passed by the learned Courts below are ordered to be set aside.

26. 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/- 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.

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

(Rakesh Kainthla)
Judge

29th September, 2026
(Chander)

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