IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 255 of 2015
Reserved on: 11.8.2025
Date of Decision: 21.8.2025.

State of H.P. ...Petitioner

Versus

Ghambo Devi ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes.

For the Petitioner : Mr. Prashant Sen, Deputy Advocate General.

For the Respondent : None.

Rakesh Kainthla, Judge

The present revision is directed against the order dated 2.4.2015, passed by learned Judicial Magistrate First Class, Court No.2, Mandi, District Mandi, H.P., vide which the respondent (accused before the learned Trial Court) was discharged. *(Parties shall hereinafter be referred to in the same*

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

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 police presented a challan against the accused before the learned Trial Court for the commission of an offence punishable under Section 447 of the Indian Penal Code (IPC) and Sections 32 and 33 of the Indian Forest Act. It was asserted that the accused had encroached upon 0-0-9 bighas of land bearing Khasra No. 204/38/2. The police registered the FIR and investigated the matter. The demarcation was obtained, and it was found that the petitioner had encroached upon the forest land. Hence, the charge sheet was filed before the Court.

3. Learned Trial Court relied upon the judgment of this Court in ***Param Dev Vs. State of H.P. 2015:HHC:236*** to hold that the FIRs were to be registered against the encroachers who had encroached upon more than 10 bighas of Government land, and no FIR can be lodged against a person who has encroached upon less land. No notice of accusation could be framed against the accused, and the accused was discharged.

4. Being aggrieved by the order passed by the learned Trial Court, the State has filed the present revision asserting that the learned Trial Court failed to appreciate that offences punishable under Section 447 of the IPC and Sections 32 and 33 of the Indian Forest Act were made out. The learned Magistrate was duty-bound to take cognisance and put notice of accusation. Therefore, it was prayed that the present revision be allowed and the order passed by the learned Trial Court be set aside.

5. Mr. Prashant Sen, learned Deputy Advocate General, for the petitioner-State, submitted that the learned Trial Court erred in discharging the accused. It was duly proved by the report of demarcation that the petitioner had encroached upon the Government land. This *prima facie* established the commission of offences punishable under Section 447 of the IPC and Sections 32 and 33 of the Indian Forest Act. Learned Trial Court erred in discharging the accused. Hence, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

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

2025:HHC:28247

7. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that a revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy 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. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

8. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

2025:HHC:28247

14. The power and jurisdiction of the Higher Court under Section 397CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

> "*12.* Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> *13.* Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to

keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of a charge is a much-advanced stage in the proceedings under CrPC."

16. This Court in the aforesaid judgment in *Amit Kapoor case* [***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***] has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228CrPC is sought for as under : (***Amit Kapoor case [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***], SCC pp. 482-83, para 27)

"27. Having discussed the scope of jurisdiction under these two provisions, i.e. Section 397 and Section 482 of the Code, and the fine line of jurisdictional distinction, it will now be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but inherently impossible to state such principles with precision. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution are to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly the charge

2025:HHC:28247

framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion, and where the basic ingredients of a criminal offence are not satisfied, then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in a conviction or not at the stage of framing of charge or quashing of charge.

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27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

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27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records, but is an opinion formed prima facie."

> **17.** The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistencies in the statement of witnesses, and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge.

9. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165:** *(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651* that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed on page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri [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: (SCC pp. 454-55, para 5)
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> > "*5.* ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy 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 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 concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

"*14. ...* Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere

with the decision in exercise of their revisional jurisdiction."

14. In the above case, also a conviction of the accused was recorded, and the High Court set aside [***Dattatray Gulabrao Phalke v. Sanjaysinh Ramrao Chavan, 2013 SCC OnLine Bom 1753]*** the order of conviction by substituting its view. This Court set aside the High Court's order, holding that the High Court exceeded its jurisdiction in substituting its views, and that too without any legal basis.

10. This position was reiterated in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

"16. It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH [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. The answer to the first question is, therefore, in the negative."

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

12. This Court held in ***Param Dev*** (supra) that the directions were issued to institute/lodge FIRs against the

2025:HHC:28247

encroachers who had encroached upon more than 10 bighas of Government land; where the encroachment was less than 10 bighas, the FIR could not be lodged. It was observed:-

> The FIR aforesaid was lodged against the bail applicant for the purported commission of penal acts constituted under the aforesaid statutory provisions, in pursuance of the directions rendered by this Court in Cr.MP(M) No. 1299/2008. This Court had rendered peremptory directions to the respondent to institute/lodge FIRs. against those encroachers who had encroached upon more than 10 bighas of Government/forest land. Obviously, given the fact that the petitioner herein has purportedly encroached upon Government/forest land to the extent of an area measuring 8-6-17 bighas, as such, when the Government/forest land purportedly encroached upon by the petitioner herein constitutes an area less than 10 bighas, naturally then when FIRs were directed to be lodged against encroachers upon Government/forest land, who have encroached therein beyond 10 bighas, which is not the extent of the area of Government/forest land purportedly encroached upon by the petitioner herein/accused, no FIR in pursuance to the directions of this Court was either lodgable or instituteable against the petitioner herein. In sequel, when the FIR as lodged against the petitioner was unlodgable against him, obviously then its being lodged against the petitioner in sequel whereof a Notice of Accusation put to him, constitutes an infraction of the directions issued by this Court in Cr.MP(M) No. 1299/2008, rendering it to be interferable and quashable.

13. Therefore, the learned Trial Court had rightly concluded that the accused could not be charged with the

commission of offences punishable under Section 447 of the IPC and Sections 32 and 33 of the Indian Forest Act.

14. Even otherwise, the complaint was silent regarding the essential ingredients of the trespass. Section 441 of the IPC defines criminal trespass as an entry upon the property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. It was laid down by the Hon'ble Supreme Court in ***Mathri v. State of Punjab, 1963 SCC OnLine SC 180: AIR 1964 SC 986*** that the prosecution has to prove that the aim of the accused was to insult, intimidate or annoy and merely because the insult, intimidation or annoyance was caused by the entry is not sufficient. It was observed:

> **18.** We think, with respect, that this statement of law, as also the similar statements in ***Laxaman Raghunath case [26 Bombay 558]*** and in ***Sellamuthu Servaigaran case [ILR 35 Mad 186],*** is not quite accurate. The correct position in law may, in our opinion, be stated thus: In order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering; that in deciding whether the aim of the entry was the causing of such

> annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something else than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry.

15. This position was reiterated in ***Rajinder v. State of Haryana*, *(1995) 5 SCC 187: 1995 SCC (Cri) 852***, wherein it was observed at page 198:

> "**21.** It is evident from the above provision that unauthorised entry into or upon property in the possession of another or unlawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate, insult or annoy the person in possession of the property. In other words, unless any of the intentions referred to in Section 441 is proved, no offence of criminal trespass can be said to have been committed. Needless to say, such an intention has to be gathered from the facts and circumstances of a given case..."

16. In the present case, the complaint only mentions that the accused had encroached upon the Government land and constructed a Gharat. There is no averment that the entry was made with an intent to commit an offence or to intimidate, insult or annoy the person in possession. Hence, the notice of accusation could not have been put for the commission of an offence punishable under Section 447 of the IPC.

2025:HHC:28247

17. The charge sheet does not mention that any notification was issued that the forest where the encroachment was made was a reserved forest. This Court held in ***State of H.P. Vs. Ami Chand 1992 (2) Shim.LC 169*** that a person cannot be held liable for the commission of an offence punishable under Section 33 of the Indian Forest Act in the absence of any notification and its due publication. It was observed: -

> 7. Sections 29 to 39 of the Indian Forest Act, 1927 (shortly hereinafter referred to as 'the Act') are material. The procedure of declaring protected forest is laid down in section 29 of the Act, which provides that the State Government may by notification in the official Gazette declare the provisions of Chapter IV of the Act applicable to any forest land or wasteland which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government Is entitled. The forest land comprised in such notification is referred to in the Act as a protected forest. Sub-section (3) of section 29 of the Act provides for certain inquiries to be made before declaring a forest as the 'protected forest'. Under section 30, the State Government is authorised inter-alia to declare any trees or class of trees in protected forest to be reserved from the date to be fixed by notification or to prohibit from a date fixed for the removal of any forest produce and the breaking up or clearing for cultivation of any land in a protected forest for such terms, not exceeding thirty years as the State Government thinks fit. Resultantly, the rights of private persons, if any, over such portion shall stand suspended during such term, provided that the remainder of such forest be sufficient and, in a locality,

2025:HHC:28247

reasonably convenient, for the due exercise of the rights suspended in the portion so closed. The Collector then is required under section 31 to cause translation into the local vernacular of every such notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification. Section 32 entitles the State Government to make rules to regulate the forest matters set out in the said section, including "clearing or breaking up of land for cultivation or other purposes in such forest". Section 33 provides penalties for acts in contravention of a notification under section 30 or for rules under section 32.

9. Apart from it, even if the aforesaid copy of the notification be assumed to be a legal and valid notification for the sake of argument, the requirement of section 31 of the Act has not been proved. Admittedly, as per the prosecution evidence, the land of the accused adjoins that of the alleged encroached land. Section 31 referred to above envisages that the Collector shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification Here neither oral nor documentary evidence has been adduced to show whether notification (Mark X) was translated in the local vernacular and whether its copy was affixed in a conspicuous place in the neighbouring villages as envisaged therein This procedure is meant only so that the respondents of the neighbouring villages, much less the accused, may acquire knowledge as to the declaration of a particular forest into demarcated protected forest, In the absence of such procedure having not been followed by the appellant, ii would be against the principle of natural Justice to permit the subject of a Slate including the accused to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence, have

> acquired any knowledge Natural justice requires that before a law can become operative it must be promulgated or published It must be broadcast in some recognisable way so that all persons may know what it is ; or at the very least, there must be some special rule or regulation or some other way or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. In the absence thereof, a law cannot come into being by merely issuing a notification without giving it due publicity in accordance with the mandatory provisions of law.

18. This position was reiterated in ***State of H.P. Ravi Kumar 2008 HLJ 363***, wherein it was observed: -

> "10. The prosecution has failed to prove that ten pine trees were cut by the respondent from the land in question. There is no evidence on record to link the trees allegedly cut by the respondent to the land in question. No demarcation of the land from where the trees were allegedly cut has been proved on record. There is nothing on record that the forest in question is a notified protected forest. The notification declaring the Forest in question as a protected forest has not been placed on record. There is no evidence of circulation of notification, under Sections 32, 33, read with Sections 30 and 31 of the Act, in the vernacular in the locality. The alleged confessional statements, Ex. PA and Ex. PW 2/A are of no help to the prosecution for want of proof of notification, under Sections 32, 33, read with Sections 30 and 31 of the Act and its publication in the vernacular in the locality..."

19. Therefore, no notice of accusation could have been put even on the merits.

20. Thus, there is no infirmity in the order passed by the learned Trial Court justifying the interference of this Court.

2025:HHC:28247

21. Hence, the present petition fails and the same is dismissed, so also the pending miscellaneous application(s), if any.

(Rakesh Kainthla)
Judge

21st August 2025
(Chander)