

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. Revision No. : 148 of 2025****Reserved on : 14.05.2025****Decided on : 31.07.2025**

State of Himachal Pradesh

...Petitioner

versus

Anu Bala and others

...Respondents

*Coram***The Hon'ble Mr. Justice Virender Singh, Judge.***Whether approved for reporting?¹ Yes.*

For the petitioner : Mr. Varun Chandel, Additional Advocate General.

For the respondents : None.

Virender Singh, Judge.

The State of Himachal Pradesh has filed the present Criminal Revision, under Section 438 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'BNSS'), against order, dated 20th January, 2025, passed by the Court of learned Special Judge, Kangra at

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

Dharamshala (hereinafter referred to as the 'trial Court'), in CrMA No. 750 of 2024 (CR No. 2059 of 2024), titled as Anu Bala versus Ashok Kumar and another.

2. As per the factual position, mentioned in the petition, respondent No. 1-Anu Bala filed an application, under Section 175 of the BNSS, against proforma respondents No. 2 and 3, for registration of case, under Section 332 (c), 126 (2), 115 (2), 351 (2) read with Section 3 (5) of the Bharatiya Nyaya Sanhita (hereinafter referred to as 'BNS') and Sections 3 and 4 of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'SC & ST Act'). On this application, the learned trial Court, passed the following order, on 20th January, 2025:

"An application for exemption on behalf of complainant moved by Shri Pankaj Tyagi, Advocate is considered and allowed for the reasons stated therein. It be registered and tagged.

Heard. As per submissions, the complaint along with documents, after retaining the attested copies of the same on record, is ordered to be sent to SHO, Police Station, Rehan for investigation in accordance with law. Papers of this Court, after due completion, be consigned to record room."

3. Vide the said order, the learned trial Court has ordered the SHO, Police Station Rehan, to investigate the matter, in accordance with law. Meaning thereby, the order is against proforma respondents No. 2 and 3, whereas, they have opted not to assail the said order, rather, the State has preferred the present Criminal Revision. As such, the question of maintainability is required to be decided before proceeding further, in this case.

4. Crimes primarily involve harm to the individuals or to their property, but, the crimes are considered offence against the State, because, they breach the public order and the established legal system. The State, acting on behalf of the society, prosecutes the violators to maintain peace and security. Administration of justice is one of the essential functions of the State and law and order within the State is to be maintained through the administration of justice and citizens are made to realize the existence and importance of the State.

5. As stated above, crime is always committed against the State and not against a particular person. The person, against whom, the offence is committed, is a victim,

who, suffers at the hands of the offenders and the State prosecutes against such offenders. Even, Article 14 of the Constitution of India is based upon the golden principle that every person is entitled to equality before law or the equal protection of the laws. The State cannot discriminate between the Government employees and ordinary citizens. State cannot protect a person against whom an offence has been alleged and the competent Court of law has passed the direction to the competent authority to inquire into the matter.

6. When, respondent No. 1-Anu Bala alleged offences against the two individuals, who, at the relevant time, were posted as police official at Police Post Rehan, Police Station Nurpur and the competent Court of law has passed the order, dated 20th January, 2025, directing the SHO to investigate the matter, in accordance with law, then, in the considered opinion of this Court, the Criminal Revision, which has been filed, by the State, is not maintainable, as, from no stretch of imagination, the State can be said to be the 'aggrieved person' to assail the order,

passed by the learned trial Court, as, no direction has been issued, in the said order, against the State.

7. Mr. Varun Chandel, learned Additional Advocate General, has made a futile attempt to justify the maintainability of the instant Criminal Revision, by relying upon Clause 3 (c) (ii) of the Notification, dated 25th May, 1971, issued by the Home Department, Government of Himachal Pradesh, which contains the rules for regulating the remuneration and duties of Advocate General, which reads as under:

“3. The duties of the Advocate General will be as follows:

xxx

xxx

xxx

(c) He will appear, or arrange for the appearance of counsel, in the following civil cases:-

(i) cases in the High Court to which the State Government is a party; or

(ii) cases in the High Court to which officers serving under the State Government are parties and which, the State Government has decide to conduct on behalf of such officers.”

8. The said provision provides that the State may decide to conduct cases on behalf of such officers, who are serving under the State Government, but, on the basis of

this provision, it cannot be said that the golden principle that crime is always against the State, is liable to be ignored. Merely, since, the proposed accused persons are Government servants, will not give an authority to the State to assail the order, passed by the learned trial Court, against the proposed accused persons, by way of filing the Criminal Revision, before this Court.

9. Reliance has also been placed on the instructions, dated 25th October, 2005, issued by the Law Department, Government of Himachal Pradesh. The State cannot take advantage of even these instructions, to assail the order, on behalf of the persons, against whom, the accusation has been made by respondent No.1-Anu Bala, the alleged victim, on whose complaint, the competent Court of law, has decided to inquire against the alleged offenders, only on account of the fact that said offenders happen to be the Government servants.

10. The pleadings are totally silent about the fact as to whether the proposed accused persons, i.e. proforma respondents No. 2 and 3, are incapable of pursuing the matter, on account of any reason or they are entitled to free

legal aid. Situation would have been otherwise, had the above two proposed accused persons knocked the door of the Legal Services Authority to provide free legal aid to them.

11. In view of the above, Criminal Revision by the State is not maintainable, as such, the same is rejected.

12. Needless to say that the rejection of the present Criminal Revision, by the State, on account of maintainability, does not preclude proforma respondents No. 2 and 3, from assailing the order, if so advised.

(Virender Singh)
Judge

July 31, 2025

(rajni)