



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.326 of 2014

Reserved on: 08.09.2025

Date of Decision: 23.09.2025

Manoj Chauhan **....Petitioner**

Versus

State of Himachal Pradesh **....Respondent**

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

For the Appellant : Mr. B.S.Chauhan, Senior Advocate with Ms. Aditi Rana, Advocate.
For the Respondent/ : Ms. Sunaina, Deputy State Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 11.09.2014 passed by learned Sessions Judge, Shimla, District Shimla, H.P. (learned Appellate Court) vide which judgment of conviction dated 01.02.2010 and order of sentence dated 02.02.2010, passed by learned Judicial Magistrate, First Class, Court No.II, Shimla. H.P.(learned Trial Court) were upheld. *(Parties shall hereinafter be referred to in*

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

the same 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 offences punishable under Sections 279, 337, 338 and 201 of the Indian Penal Code (IPC). It was asserted that the informant, Shivali Sharma(PW-4), and her brother Ishan Sharma (PW-6) were returning from Dhalli after buying some articles on 3.12.2004 at about 5:30 p.m. A Santro Car came from the opposite side, overtook a Himachal Road Transport Corporation (HRTC) bus at high speed, and hit Ishan (PW-6), who sustained injuries. The accident occurred due to the high speed of the car and the negligent overtaking of the HRTC bus. The matter was reported to the police. An entry No.20 (Ext.PW-11/A) was recorded in the Police Station. HC Surender Singh (PW-10) and Constable Ranjeet Singh (PW-11) were sent to the spot for verification. The informant, Shivali Sharma (PW-4), made a statement (Ext.PW-4/A), which was sent to the police station where an FIR (Ext.PW-9/A) was registered. The injured person was carried to the hospital.

Dr.Ramesh Chand (PW-2) medically examined the injured and found that he had suffered injuries. He advised a dental examination. Dr Reeta Negi (PW-5) conducted the dental examination of the injured and found a fracture on the left lateral incisor, right lateral incisor and cervical end. She issued MLC (Ext.PW-5/A). Dr Ramesh Chand (PW-2) issued the final report stating that the injuries sustained by Ishan (PW-6) were grievous. He issued an MLC (Ext.PW-2/B). HCSurender Singh (PW-10) went to the spot. He prepared a site plan (Ext.PW-10/A), seized the vehicle vide seizure memo (Ext.PW-3/A) and recorded the statements of prosecution witnesses as per their version. After completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of offences punishable under Sections 279, 337, 338 and 201 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined eleven witnesses to prove its case. Jagdish Dutt (PW-1) is an eyewitness. Dr Ramesh Chand (PW-2) conducted the medical examination of the injured. Ajay Justa (PW-3) is the witness to recovery. Shivali Sharma (PW-4) is the informant. Dr Reeta Negi (PW-5) conducted the dental examination of the injured. Ishan Sharma (PW-6) is the injured. Mohit Sood (PW-7) did not support the prosecution's case. Sanjay Chauhan (PW-8) is the witness to the recovery of the driving license. Inspector Sunil Negi (PW-9) prepared the challan. HC Surender Singh (PW-10) conducted the investigation. HHC Ranjeet Singh (PW-11) proved the entry in the daily diary.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He did not produce any evidence in his defence.

6 Learned Trial Court held that the evidence on record proved that the accused was driving a car, which overtook an HRTC bus at a high speed, and hit Ishan Sharma (PW-6). The accused was supposed to ensure that his driving was safe and did not endanger the safety of pedestrians. He

fled away from the spot. The negligence of the accused caused simple and grievous injuries to Ishan Sharma(PW-6). Hence, the accused was convicted and sentenced as under:-

Sl. No.	Sections	Sentenced
i.	279 of IPC	Three months
ii.	337 of IPC	Three months
iii.	338 of IPC	Six months
iv.	201 of IPC	Three months

All the sentences were ordered to run concurrently.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal. Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused was driving the vehicle at the time of the accident. He overtook an HRTC bus, and his car hit Ishan Sharma (PW-6). He failed to ensure the safety of pedestrians. Therefore, he was rightly convicted and sentenced by the learned Trial Court.

8. Feeling aggrieved and dissatisfied with the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that the learned Courts below failed to appreciate the evidence

properly. The site plan did not depict the position of the HRTC bus. Independent witnesses did not support the prosecution's case. 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 Mr B.S.Chauhan, learned Senior Counsel, assisted by Ms Aditi Rana, learned counsel for the petitioner and Ms Sunaina, learned Deputy Advocate General, for the respondent/State.

10. Mr B.S.Chauhan, learned Senior Counsel for the petitioner, submitted that the initial information given to the police did not reveal the registration number of the vehicle, and there is no evidence to suggest how the police came to know that the accused was driving the vehicle or that his vehicle was involved in the accident. The learned Courts below ignored this aspect. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside. He relied upon judgments of this Court in *Deep Raj vs. State of H.P.*

2025:HHC:19449 and *Chaina Ram vs. State of H.P. 59 of 2013*
225:HHC25012 in support of his submission.

11. Ms Sunaina, learned Deputy Advocate General for the respondent/State, submitted that the learned Courts below had rightly held that the accused was driving the vehicle, which had caused the accident. He fled away from the spot and failed to carry the injured to the hospital. His name was mentioned by the injured and his sister. The accused sought an exemption from personal appearance on the date when the statements of the informant and the injured were recorded. Therefore, he cannot dispute his identity. Learned Courts below had taken a reasonable view while convicting and sentencing the accused, and this Court should not interfere with the concurrent findings of fact recorded by the learned Trial Court. Hence, she prayed that the present petition 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 *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 advertng 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.

14. 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:

“14. The power and jurisdiction of the Higher Court under Section 397 CrPC, 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.

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 aforesaid. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”

15. 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 at page 169:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In *State of Kerala v. Puttumanallath 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)

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*, (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.”

16. 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**, (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.”

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

18. The police were informed of the accident telephonically. An entry(Ext.PW-11/A) was recorded in the

daily diary at 6:30 p.m. on 3.12.2004, mentioning that some unknown person disclosed that a Santro vehicle had hit a boy. The vehicle did not have any registration plates. The police officials at Sanjauli Chowk and Dhalli tunnel were directed to detain the vehicle, and HC Surinder Singh (PW-11) and Constable Ranjeet Singh (PW-10) were directed to go to the spot. The entry (Ext.PW-11/A) does not mention the registration number of the vehicle; rather, it mentions that the vehicle did not have any front or rear registration plates.

19. Shivali Sharma (PW-4) made a statement (Ext.PW-4/A) that she did not know the registration number of the Santro Car; however, the car was new and violet. Thus, the initial statement of the informant also does not mention the registration number of the vehicle.

20. The informant, Shivali (PW-4), stated that a violet Santro had hit her brother, who fell and sustained injuries. She could not notice the registration number because the vehicle was being driven at a high speed. Thus, she has not mentioned the registration number of the vehicle on oath.

21. The informant specifically stated in her examination-in-chief that the Santro car was violet. Perusal of the temporary registration number (Ext.PS2) mentions the colour of the vehicle as forest dew, which is quite distinct from violet; therefore, the temporary registration certificate does not corroborate the informant's version.

22. The informant stated that she could identify the accused, but he was not present in the Court. It is difficult to believe that she would have been in a position to identify the driver when she was unable to notice the registration plates of the vehicle. She did not state that the driver was known to her; therefore, her identification in the Court for the first time without corroboration from the previous identification would have been meaningless. 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 where the witness had not seen the accused before the date of the incident, the identification of the accused made in the dock is not acceptable. It was observed at 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”!

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

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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).

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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 recent

two cases of *Jayan v. State of Kerala* [*Jayan v. State of Kerala*, (2021) 20 SCC 38] and *Amrik Singh v. State of Punjab* [*Amrik Singh v. State of Punjab*, (2022) 9 SCC 402; (2023) 2 SCC (Cri) 404].

28. In *Jayan* [*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 case* [*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 timegap 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.”

23. Ishan Sharma (PW-6) stated in his examination-in-chief that he came to know subsequently that Manoj Chauhan was driving the vehicle, and he could identify the driver in the Court. A violet Santro car bearing registration No. CH-20(T)-3310 hit him at a high speed. He stated in his cross-examination that the registration number was disclosed to him on the next day by his sister. This statement shows that he had received the information about the

registration number of the vehicle from his sister and had not mentioned it on his own knowledge. His sister Shivali Sharma (PW-4) did not state that she had disclosed the registration number of the vehicle to the injured. Therefore, the statement made by the injured that his sister had disclosed the name of the driver to him is not corroborated by the statement of his sister. He was told the name of the accused, and he had not seen the driver himself. Hence, his testimony regarding the identity of the accused is hearsay and inadmissible.

24. HC Surender Singh (PW-10) did not disclose how he came to know about the registration number of the vehicle or the accused being a driver of the offending vehicle. He stated in his cross-examination that he came to know during the investigation that two people were sitting in the car, and the name of the other person was Rajeev Justa; however, no such person was examined. Thus, the statement of the Investigating Officer does not prove the identity of the car or the accused.

25. Mohit Sood (PW-7) did not support the prosecution's case. He was permitted to be cross-examined. He denied that a car bearing registration No. CH-20(T)-3310 had hit the injured. He denied that he came to know that the accused Manoj Chauhan was driving the vehicle. He denied his previous statement recorded by the police. Hence, his testimony does not establish the identity of the accused or the car.

26. Jagdish Dutt (PW-1) stated that a Santro car hit a boy and sped away from the spot. He did not know the name of the driver or the registration number of the vehicle. He was permitted to be cross-examined. He denied that the registration number of the car was CH-20(T)-3310. He denied his previous statement recorded by the police. The statement of this witness also does not establish the identity of the accused or the car.

27. Learned Trial Court held that the accused was not present in the Court during the examination of the witnesses, and he could dispute his identity. There can be no dispute that a person seeking exemption from his personal appearance

cannot dispute his identity, but even if he had been identified in the Court, such identification would not be sufficient in the absence of the identification made in the previous Test Identification Parade, as noticed above.

28. In the present case, no Test Identification Parade was conducted, and the identification of the accused in the Court would have been worthless. Hence, the accused could not have been convicted because of his absence from the Court.

29. Learned Trial Court also held that it was suggested to the witnesses that the accident did not occur due to the negligence of the accused, which amounted to the admission that the accused was driving the vehicle. A denied suggestion does not amount to any proof and could not have been used to convict the accused.

30. Thus, both the learned Courts below failed to appreciate that the identity of the accused and the car were not established. Hence, the learned Courts below erred in convicting and sentencing the accused.

31. Consequently, the present petition is allowed and the judgment and order passed by the learned Trial Court and affirmed by the learned Appellate Court are set aside, and the accused is acquitted of the charged offences. His bail bonds are discharged. The fine amount, if deposited by the petitioner/accused, be refunded to him after the expiry of the statutory period of limitation in case of no further appeal, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Apex Court.

32. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioner is directed to furnish bail bonds in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the petitioner on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

33. In view of the above, the present petition stands disposed of, so also the pending miscellaneous application(s), if any.

34. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

23rd September 2025.
(ravinder)