



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 252 of 2014
Reserved on: 3.9.2025
Date of Decision: 14.10.2025.

Sunil Kumar and another
Versus
State of H.P.

...Petitioners
...Respondent

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

For the petitioners : Mr Rajesh Mandhotra,
Advocate.
For the Respondent/State : Mr Jitender K. Sharma,
Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 9.7.2014, passed by learned Additional Sessions Judge-III, Kangra at Dharamshala, vide which the judgment of conviction and order of sentence dated 15.1.2009, passed by learned Judicial Magistrate First Class, Palampur, District Kangra, H.P. (learned Trial Court) were upheld. *(Parties shall hereinafter be referred to in*

¹ Whether reporters of 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 Section 61(1)(a) of the Punjab Excise Act (as applicable to the State of H.P.) and Section 181 of the Motor Vehicles Act. It was asserted that ASI Gambhir Chand (PW4), ASI Gurbachan Singh (PW6), HHC Prem Chand (PW1) and Constable Daljeet Singh (PW3) were present at Kali-Di-Hatti on 17.12.2006 in an official vehicle bearing registration No. HP-39A-1487 being driven by Constable Manmohan Singh. Two Maruti Vans came from Maranda at about 1.00 AM. The police signalled the drivers to stop, but the Vans sped away towards the Rajpur-Tanda Bye-pass. The police became suspicious and followed the vans. They intercepted the Vans at a distance of half a kilometre before Rajpur Chowk. The drivers stopped the vans and ran towards the bushes. The police followed the drivers, but they escaped by taking advantage of the darkness. The police identified them as Billa and Jitru, both residents of Tikkar. The police checked the vans and found their registration numbers to

be HP-37A-4251 and DL-2CC-2574. The police recovered nine cartons containing 108 bottles of country liquor bearing the mark Lal Kila, in the van bearing registration No. HP-37A-4251 and 10 cardboard boxes containing 120 bottles bearing the mark Lal Kila in the van bearing registration No. DL-2CC-2574. The police took sample bottles from the cardboard boxes and put the remaining 222 bottles back in the cardboard boxes. The cardboard boxes were put in four gunny bags. Sample bottles and gunny bags were sealed with seal 'D'. Sample seal (Ex.PW4/A) was taken on a separate piece of cloth, and the seal was handed over to ASI Gurbachan Singh after use. Liquor was seized vide memo (Ex.PW1/A). Rukka (Ex.PW4/B) was prepared and was sent to the Police Station, where FIR (Ex.PW4/C) was registered. ASI Gambhir Chand conducted the investigation. He prepared the site plan (Ex.PW4/E) and recorded the statements of witnesses as per their version. Samples were sent to CTL, Kandaghat, and the results of analysis (Ex.PX1 and Ex.PX2) were issued, stating that the samples of country liquor contained 49.70%, 49.70%, 49.70%, 50%, 50%, 49.70% and 50% proof alcohol. Statements of prosecution witnesses were recorded as per their version, and after the completion of the investigation,

a challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court charged the accused with the commission of an offence punishable under Section 61(1)(a) of the Punjab Excise Act (as applicable to the State of H.P.), to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined six witnesses to prove its case. Prem Chand (PW1) and SI Gurbachan Singh (PW6) are the witnesses to the recovery. Kehar Singh (PW2) was working as an MHC with whom the case property was deposited. Constable Daljit Singh (PW3) carried the samples to CTL Kandaghat. Gambhir Chand (PW4) effected the recovery and investigated the matter. Gaurav Minhas (PW5) is the owner of the vehicle who did not support the prosecution's case.

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

6. Learned Trial Court held that the testimonies of the prosecution's witnesses corroborated each other. The incident occurred at midnight, and it was not possible to call any

independent person to witness the recovery or the seizure. The accused were identified when they were running away from the spot, and their identification could not be doubted. Hence the accused were convicted of the commission of an offence punishable under Section 61(1)(a) of the Punjab Excise Act (as applicable to the State of H.P.) and were sentenced to undergo rigorous imprisonment for six months, pay a fine of ₹5,000/- each and in default of payment of fine to undergo further simple imprisonment of one month for the commission of aforesaid offence.

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 Additional Sessions Judge-III, Kangra, at Dharamshala (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the testimonies of police officials corroborated each other. There was nothing in their testimonies to show that they had any motive to depose against the accused. The accused were duly identified by the police officials on the spot when they were running away from the spot. The incident occurred at night, and it was not possible to call any independent person to witness the

search. There was no infirmity in the judgment and order passed by the learned Trial Court. Hence, the appeal was dismissed.

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 material placed before them. The testimonies of the prosecution witnesses do not inspire confidence. The drivers ran away from the spot after taking advantage of the darkness. No witness had identified them. The owner of the vehicle, Gaurav Minhas (PW5), categorically denied that he had employed Sunil Kumar as a driver. Thus, there was no proper identification of the drivers. The place where the vehicles were intercepted was a thickly populated area, and no efforts were made to join any independent person. 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 Rajesh Mandhotra, learned counsel for the petitioners/accused, and Mr Jitender Sharma, learned Additional Advocate General, for the respondent-State.

10. Mr Rajesh Mandhotra, learned counsel for the petitioners/accused, submitted that the petitioners are innocent and they were falsely implicated. There is no proof of the fact that the petitioners were driving the vans intercepted by the police. The police officials admitted in their cross-examination that the place of the incident is located in a thickly populated area; however, no effort was made to associate any witness from the locality. The integrity of the case property was not established. The learned Courts below failed to consider this aspect. Hence, he 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 learned Courts below had rightly held that the testimonies of the police officials corroborated each other on material aspects. There is nothing in their cross-examination to show that they had any enmity against the accused or any motive to depose falsely against them. This Court should not interfere with the concurrent findings of fact recorded by the learned Courts below. Hence, 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 *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 advertg 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 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.

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. 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)

“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 reappraise 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 reappraising 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.

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* [*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. It was specifically asserted in the rukka (Ex.PW4/B) that the drivers of the vans ran away from the spot by taking advantage of the darkness. They were identified as Billa and Jitru in the light of the vehicle. There is no evidence on record to show that Sunil Kumar is known as Jitru, and Ashok Kumar is also known as Billa. No person from the locality was examined to prove this fact.

19. Prem Chand (PW1) stated in his examination-in-chief that the drivers stopped the vans near Rajpur Chowk and ran towards the bushes. They were identified as Jitru and Billa, residents of Tikkar who were present in the Court. Gambhir Chand (PW4) stated in his examination-in-chief that the drivers ran away in the darkness and were identified as Billa and Jitru, the accused present in the Court. Gurbachan Singh (PW6) stated that the drivers ran away from the spot, and they were identified as Jitru and Billa, residents of Village Tikkar.

20. Thus, the witnesses identified the drivers as Billa and Jitru, and they did not state that they were also known as Sunil Kumar and Ashok Kumar. The accused described themselves as Sunil Kumar and Ashok Kumar in the proceedings before the Court and nowhere claimed that they were known as Billa and Jitru. Therefore, the burden was upon the prosecution to establish the identity of the accused.

21. It was submitted that the witnesses had identified the accused in the Court, which is the proper identification and learned Courts below had rightly relied upon the identification made in the Court. This submission cannot be accepted. There is no evidence that the accused were involved in the commission of a similar offence in the past. The identification slips placed on record show that the accused were not previously convicted in any case. No witness explained the reason for his acquaintance with the accused. The accused were seen running away in the middle of the night with the help of the headlights of the vehicle. Therefore, in these circumstances, it was necessary to test the identification of the accused in a previous test identification parade. 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."

22. 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:

"It is undesirable that a witness should 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.”

23. 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”!

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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 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.”

24. In the present case, the Test Identification Parade was not conducted, and the identification of the accused in the Court could not have been used to fix their identity.

25. Gaurav Minhas (PW5), owner of the vehicle bearing registration No. HP-37A-4251 stated that he was in judicial custody in some other case. When he was released from prison, he found that the police had seized his vehicle. He had not engaged any person as a driver of the vehicle. He was permitted to be cross-examined. He denied that he had engaged Sunil Kumar as a driver of the vehicle. He denied the previous statement recorded by the police. He showed his ignorance about the name of the person from whom the vehicle was seized.

26. Thus, Gaurav Minhas has not named the accused Sunil Kumar as the driver of the vehicle, and his testimony does not establish the prosecution's case that the accused Sunil Kumar was the driver of the vehicle bearing registration No. HP-37A-4251.

27. Therefore, the evidence led by the prosecution to prove the identity of the accused as the drivers of the vehicles was not satisfactory, and the learned Courts below erred in

holding that the accused were proved to be the drivers of the vehicles.

28. Once it is held that the evidence regarding the identification of the accused is not satisfactory, the seizure of the bottles and their identification would become meaningless, as the bottles analysed cannot be connected to the accused.

29. No other point was urged.

30. In view of the above, the judgments and order passed by the learned Courts below cannot be sustained. Hence, the revision is allowed, and the judgments and order passed by the learned Courts below are set aside. The accused are acquitted of the commission of an offence punishable under Section 61(1)(a) of the Punjab Excise Act (as applicable to the State of H.P.). The fine, if deposited, be refunded to the petitioners/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

31. 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 petitioners/accused are

directed to furnish personal bonds in the sum of ₹25,000/- each with one surety each 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 petitioners/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

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

33. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

14th October, 2025
(Chander)