

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. MMO No. 284 of 2025**

**Reserved on: 23.4.2026**

**Date of Decision: 1.6.2026.**

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Om Chand ..... Petitioner

Versus

State of HP & ors. .... Respondents

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*Coram*

*Hon'ble Mr Justice Rakesh Kainthla, Judge.*

*Whether approved for reporting?<sup>1</sup> No.*

For the Petitioner : Mr Ashok Kumar Verma,  
Advocate.

For Respondents No.1 & 2 : Mr Lokender Kutlehria,  
Additional Advocate General.

For Respondent No.3 : Mr Vijay Kumar Verma,  
Advocate.

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*Rakesh Kainthla, Judge*

The petitioner has filed the present petition against the order dated 25.2.2025, passed by the learned Additional Sessions Judge, Sarkaghat, District Mandi, H.P. (learned Revisional Court), vide which the order dated 9.8.2023, passed by the learned Sub Divisional Magistrate (SDM), Dharampur, District Mandi, H.P., (learned Trial Court) was upheld. (*The*

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment? Yes.

*parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present petition are that the complainant made a complaint to the learned Trial Court asserting that the respondent (petitioner before this Court) is the owner of the land located adjacent to the complainant's house. Two big trees were growing in the respondent's land. The branches of the trees extended over the complainant's house. They touch the complainant's house during the rainy season and heavy rain. The trees were likely to fall on the complainant's house and cause damage to it. The complainant had repeatedly requested the respondent to cut and remove the trees, but in vain. Hence, a complaint was made before the learned Trial Court to take action to remove the trees.

3. Learned Trial Court passed an order on 27.11.2020: -

“We may issue order regarding removal of branches which are posing threat to the house. Put up a draft accordingly”

4. The learned Trial Court called the report from the Field Agency, and recorded statements of Sarwan Kumar and the

complainant on 29.12.2022 and the respondent Om Chand and his son Lekh Raj on 16.02.2023.

5. Learned Trial Court passed a final order on 9.8.2023 holding that the trees had become a public nuisance within the meaning of Section 133 (d) of the Code of Criminal Procedure (Cr.PC) and needed to be removed for the prevention of any injury or damage to the complainant's life and property. Therefore, the learned Trial Court made the conditional order absolute and ordered the respondents to remove the above-mentioned trees within fifteen days of the order, failing which an action would be taken as per the law.

6. Being aggrieved by the order passed by the learned Trial Court, the respondent filed a revision which was decided by the learned Additional Sessions Judge, Sarkaghat, District Mandi, H.P. (learned Revisional Court). Learned Revisional Court held that the learned Trial Court had passed the order after taking the report of the Field Agency and hearing the parties. The respondent claimed that the order was passed under the political influence and ignorance of a material fact, but no such fact was placed before the Court. There was no infirmity in the order

passed by the learned Trial Court, hence the revision preferred by the respondent was dismissed.

7. Being aggrieved by the orders passed by the learned Courts below, the respondent has filed the present petition for quashing the orders passed by the learned Courts below. It has been asserted that the orders passed by learned Courts below are unreasoned, illegal and unwarranted. The learned Trial Court had passed the order under political influence, and this aspect was ignored by the learned Revisional Court. Therefore, it was prayed that the present petition be allowed and the orders passed by the learned Courts below be set aside.

8. I have heard Mr Ashok Kumar Verma, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent Nos. 1 and 2/State and Mr Vijay Kumar Verma, the learned counsel for respondent No.3/complainant.

9. Mr Ashok Kumar Verma, learned counsel for the petitioner/original respondent, submitted that the learned Trial Court had passed a conditional order of removing the branches of the trees, but passed a final order of removing the trees. Learned

Trial Court could have only made the conditional order absolute, and it was not permissible for the learned Trial Court to pass a different final order without modifying the conditional order. Therefore, he prayed that the present petition be allowed and the order passed by the learned Courts below be set aside.

10. Mr Lokender Kutlehria, learned additional Advocate General for respondents No.1 and 2/State submitted that the learned Trial Court had provided a full opportunity to the petitioner/original respondent to put forth his case. Learned Trial Court had also called for the reports from the field agencies, and it was duly established before the learned Trial Court that the trees were posing a danger to the complainant's house. Therefore, the learned Trial Court was justified in passing an order to remove the trees. There is no infirmity in the orders passed by the learned Courts below. Hence, he prayed that the present petition be dismissed.

11. Mr Vijay Kumar Verma, learned counsel for the respondent/original informant, submitted that it was duly proved on record before the learned Trial Court that the trees existing in the land of the petitioner/original respondent were

posing a danger to the complainant's house, and the learned Trial Court had rightly passed an order for the removal of the trees. There is no infirmity in the order passed by the learned Trial Court. Therefore, he prayed that the present petition be dismissed.

12. I have given considerable thought to the submission made at the bar and have gone through the records carefully.

13. It is undisputed that the petitioner had filed a revision before the learned Revisional Court, which was dismissed by the learned Revisional Court. It was laid down by the Hon'ble Supreme Court in *Krishnan Vs. In Krishnaveni (1997) 4 SCC 241*, the High Court can intervene under Section 482 of CrPC (corresponding to Section 528 of BNSS) when there is a grave miscarriage of justice or abuse of the process of the Court. It was observed:

“10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has *suo motu* power under Section 401 and continuous supervisory jurisdiction under Section 483 of

the Code. So, when the High Court on examination of the record finds that there is a grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and, in an appropriate case, even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of a criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed, and public justice can be ensured only when the trial is conducted expeditiously.

**11.** In *Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551: 1978 SCC (Cri) 10]*, a three-judge Bench was to consider the scope of the power of the High Court under Section 482 and Section 397(2) of the Code. This Court held that the bar on the power of revision was put to facilitate expedient disposal of the cases, but in Section 482, it is provided that nothing in the Code, which would include Section 397(2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction of the said two provisions on this behalf, it was held that though the High Court has no power of revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the aggrieved

party. In that case, when allegations of defamatory statements were published in the newspapers against the Law Minister, the State Government decided to prosecute the appellant for an offence under Section 500 IPC. After obtaining the sanction, on a complaint made by the public prosecutor, cognisance of the commission of the offence by the appellant was taken to trial in the Sessions Court. Thereafter, the appellant filed an application to dismiss the complaint on the ground that the court had no jurisdiction to entertain the complaint. The Sessions Judge rejected all the contentions and framed the charges under Section 406. The Order of the Sessions Judge was challenged in revision in the High Court. On a preliminary objection raised on maintainability, this Court held that the power of the High Court to entertain the revision was not taken away under Section 397 or inherent power under Section 482 of the Code.

12. In *V.C. Shukla v. State through CBI* [1980 Supp SCC 92: 1980 SCC (Cri) 695: (1980) 2 SCR 380] (SCR at p. 393), a four-judge Bench per majority held that sub-section (3) of Section 397, however, does not limit at all the inherent powers of the High Court contained in Section 482. It merely curbs the revisional power given to the High Court or the Sessions Court under Section 397(1) of the Code. In the *Rajan Kumar Machananda case* [1990 Supp SCC 132: 1990 SCC (Cri) 537], the case related to the release of a truck from attachment, obviously on the filing of an interlocutory application. It was contended that there was a prohibition on the revision by operation of Section 397(2) of the Code. In that context, it was held that it was not reviewable under Section 482 in the exercise of inherent powers by operation of sub-section (3) of Section 397. On the facts in that case, it was held that by provisions contained in Section 397(3), the revision is not maintainable. In the *Dharampal case* [(1993) 1 SCC 435: 1993 SCC (Cri) 333], which related to the exercise of power to issue an order of attachment under Section 146 of the Code, it was held that the inherent power under Section

482 was prohibited. On the facts, in that case, it could be said that the learned Judges would be justified in holding that it was not revisable since it was a prohibitory interim order of attachment covered under Section 397(2) of the Code but the observations of the learned Judges that the High Court had no power under Section 482 of the Code were not correct in view of the ratio of this Court in *Madhu Limaye case [(1977) 4 SCC 551: 1978 SCC (Cri) 10]* as upheld in *V.C. Shukla case [1980 Supp SCC 92: 1980 SCC (Cri) 695 : (1980) 2 SCR 380]* and also in view of our observations stated earlier. The ratio in the *Deepti case [(1995) 5 SCC 751: 1995 SCC (Cri) 1020]* is also not apposite to the facts in the present case. To the contrary, in that case, an application for discharge of the accused was filed in the Court of the Magistrate for an offence under Section 498-A IPC. The learned Magistrate and the Sessions Judge dismissed the petition. In the revision at the instance of the accused, on a wrong concession made by the counsel appearing for the State that the record did not contain allegations constituting the offence under Section 498-A, the High Court, without applying its mind, had discharged the accused. On appeal, this Court, after going through the record, noted that the concession made by the counsel was wrong. The record did contain the allegations to prove the charge under Section 498-A IPC. The High Court, since it failed to apply its mind, had committed an error of law in discharging the accused, leading to the miscarriage of justice. In that context, this Court held that the order of the Sessions Judge operated as a bar to entertain the application under Section 482 of the Code. In view of the fact that the order of the High Court had led to the miscarriage of justice, this Court had set aside the order of the High Court and confirmed that of the Magistrate.

13. The ratio of the *Simrikhia case [(1990) 2 SCC 437: 1990 SCC (Cri) 327]* has no application to the facts in this case. Therein, on a private complaint filed under Sections 452 and 323 IPC, the Judicial Magistrate, First Class, had taken cognisance of the offence. He transferred the case for

inquiry under Section 202 of the Code to the Second-Class Magistrate, who, after examining the witnesses, issued a process to the accused. The High Court, exercising the power under Section 482, dismissed the revision. But subsequently, on an application filed under Section 482 of the Code, the High Court corrected it. The question was whether the High Court was right in reviewing its order. In that factual backdrop, this Court held that the High Court could not exercise inherent power for the second time. The ratio therein, as stated above, has no application to the facts in this case.

14. In view of the above discussion, we hold that though the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for a decision on the merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the context of the revisional power under Section 397(1) read with Section 397(3) and the inherent powers. We do not find any justification warranting interference in the appeal.”

14. This position was reiterated in *Rajinder Prasad v. Bashir*, (2001) 8 SCC 522, wherein it was held:

“...though the power of the High Court under Section 482 of the Code is very wide, the same must be exercised sparingly and cautiously, particularly in a case where the petitioner is shown to have already invoked the revisional

jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been a failure of justice or misuse of judicial mechanism or procedure, a sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held, “Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code.”

15. A similar view was taken in *Kailash Verma v. Punjab State Civil Supplies Corporation*, (2005) 2 SCC 571, and it was held:

“5. It may also be noticed that this Court in *Rajathi v. C. Ganesan* [(1999) 6 SCC 326: 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code, as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is a serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of the law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

16. This position was reiterated in *Shakuntala Devi v. Chamru Mahto*, (2009) 3 SCC 310: (2009) 2 SCC (Cri) 8: 2009 SCC OnLine SC 292, wherein it was observed: -

“24. It is well settled that the object of the introduction of sub-section (3) in Section 397 was to prevent a second revision to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed, and in special cases, the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482 was not subject to the prohibition under sub-section (3) of Section 397 of the Code and was capable of being invoked in appropriate cases. Mr Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof, does not, therefore, commend itself to us.

25. On the factual aspect, the Magistrate came to a finding that the appellants were entitled to possession of the disputed plot. It is true that while making such a declaration under Section 145(4) of the Code, the Magistrate could have also directed that the appellants be put in possession of the same.

26. The question which is now required to be considered is whether the High Court was right in quashing the order passed by the Magistrate, which was confirmed by the Sessions Judge, on the ground that the application made by the appellants under Section 145(6) of the Code was barred firstly by limitation under Article 137 of the Limitation Act and also by virtue of Section 6 of the Specific Relief Act, 1963.

17. Delhi High Court also took a similar view in *Surender Kumar Jain v. State*, ILR (2012) 3 Del 99 and held: —

“5. The issue regarding the filing of a petition before the High Court after having availed the first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr. P.C. laid the statutory bar of the second revision petition, the courts have held that the High Court did enjoy inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in those cases. But that power was to be exercised sparingly and with great caution, particularly when the person approaching the High Court has already availed a remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved by the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before the Sessions Court. It all depends not only on the facts and circumstances of each case but also on whether the impugned order brought about a situation that is an abuse of the process of the court, there was a serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in *Madhu Limave v. State of Maharashtra* (1977) 4 SCC 551, *State of Orissa v. Ram Chander Aggarwal*, (1979) 2 SCC 305: AIR 1979 SC 87, *Rai Kapoor v. State (Delhi Administration)* 1980 Cri LJ 202, *Krishnan v. Krishnaveni and Kailash Verma v. Punjab State Civil Supplies Corporation* (2005) 2 SCC 571.”

18. It is apparent from the judgments that the High Court has a limited jurisdiction and it can rectify a serious miscarriage of justice for a breach of a mandatory provision of law while exercising its jurisdiction under Section 482 of Cr.P.C.

19. Section 133 of Cr.P.C. provides as under: -

“133. Conditional order for removal of nuisance.

(1) Whenever a District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers -

(a) ...

(b) .....

(c) ....

(d) That any building, tent, or structure, or any tree, is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary: or

(e) ....

(f).....

Such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank well or excavation, or owning or possessing such animal or tree, within time to be fixed in the order-

(i) .....

(ii) .....

(iii)...

(iv). To remove, repair or support such building, tent or structure, or to remove or support such trees

(v) ...

(vi)...

or, if he objects so to do, to appear before himself or some other Executive Magistrate Subordinate to him at a time and place to be fixed by the order and show cause, in the manner hereinafter provided, why the order should not be made absolute.”

20. A bare perusal of the Section shows that when an information is received by the learned Magistrate from the police or somewhere else, he has to satisfy himself that the information relates to the situation contemplated in Section 133 of Cr.P.C. and pass a conditional order requiring the person to the specified act and if he objects to do so, to appear before himself or any Magistrate subordinate to him. Section 135 provides that the person to whom an order is addressed can perform the act directed in the order, or he may appear and show cause against it. Section 137 provides that where the existence of a public right is denied, an inquiry would be made. Section 138 provides that when the person shows cause, the Magistrate shall take evidence in the same manner as in the summons case. Section 138 (2) provides that where the Magistrate is satisfied that the order either originally made or subject to such modification as he considers necessary is reasonable, the order shall be made absolute without modification or with such modification.

21. It is apparent from the scheme of these Sections that conditional order is the foundation on which the whole of the proceedings rests. If the person to whom the conditional order is directed accepts the order and complies with the same, the proceedings terminate, but if he feels aggrieved and shows cause, the inquiry has to be conducted, and the order can be made absolute, modified or discharged after the inquiry. Thus, the presence of conditional order is necessary before it can be made absolute, modified or discharged. The purpose of passing the conditional order is to make the other party aware of the nature of the order that can be passed in the proceedings. Therefore, it puts the other party on notice of the ultimate order and forms part of natural justice.

22. In the present case, the learned Trial Court had passed a conditional order requiring the removal of branches that were posing a threat to the informant's house. Only this conditional order could have been made absolute, and it was impermissible for the learned Trial Court to pass an order of removal of the trees beyond the scope of the conditional order. It was laid down by the Mysore High Court in *State v. Mahadevappa Goundappa Godi*, 1963 SCC OnLine Kar 56: AIR 1964 Mys 52 that the Magistrate

has no jurisdiction to pass a different final order. It was observed at page 53:

4. Despite the fact that the learned Magistrate has stated in the final order that the preliminary order has been made final, there is no gainsaying of the fact that he had substantially modified the preliminary order. The question for decision is whether he was competent to pass that order. Under section 133(1) Cr. P.C. “whenever a District Magistrate, a Sub Divisional Magistrate or a Magistrate of the first class considers, on receiving a police report or other, information and on taking such evidence (if any) as he thinks fit, that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by public or from any public place ..... such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance ..... within a time to be fixed in the order.”

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7. Under section 135(b), it is open to the jury to try the issue whether the order made is reasonable and proper. But so far as the Magistrate who has passed the preliminary order is concerned, all that he can do under section 137 is to either drop further proceedings or make the preliminary order absolute. There is no provision in the code authorising the Magistrate either to amend the preliminary order or to pass any order except in accordance with the preliminary notice. The only power conferred on the Magistrate is to make the preliminary order absolute and nothing more. This view of the law appears to be obvious from the plain language of section 137. The view taken by me receives support from various decided cases.

8. In this connection, I may refer to the decision in *Juje D'Silva v. Kashmir D'Silva*, AIR 1943 Mad 335, wherein it was laid down that a Magistrate sitting alone under section 137

has no jurisdiction to modify the original order before making it absolute; it is only when sitting with a jury that he has power to modify the order before making it absolute. In that case, in the preliminary notice issued by the Magistrate, the respondent was directed either to cut the tile trees, which are said to have been in a dangerous condition, or to secure the same with wires, but in the final order made, he was asked to cut down the tree. He was not given any alternative. When this order was challenged before the learned District Magistrate of South Kanara, he referred the case under section 438 Cr. P.C. to the High Court of Madras. The High Court of Madras quashed the order of the first Court, holding that the Magistrate had no jurisdiction to modify the preliminary order. The view taken by the Madras High Court was accepted as correct by the Calcutta High Court in *Secretary, Rate-payers Committee North Barrackpore Municipality v. Dwip Narayan Singh*, AIR 1952 Cal 127 and by the Allahabad High Court in *Sadananda Tiwari v. State*, AIR 1958 All 174. No decision, taking a contrary view was brought to my notice.”

23. Learned Revisional Court failed to appreciate this aspect and was only influenced by the opportunity having been provided to the respondent.

24. It was submitted that the learned Trial Court had the jurisdiction to modify the conditional order, and there is no infirmity in the order passed by the learned Trial Court. Section 138(2) provides that if the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be

made absolute without modification or, as the case may be, with such modification. Therefore, the learned Magistrate has the jurisdiction to modify the order, but this modification has to be made before making the conditional order absolute to apprise the respondent of the modified order. In the present case, the record does not show that any such modification was made, and the order passed by the learned Trial Court varying the conditional order cannot be sustained.

25. Therefore, the learned Trial Court had committed a jurisdictional error while passing the order, and the learned Revisional Court did not notice this error committed by the learned Trial Court. Hence, the orders passed by the learned Courts below cannot be sustained.

26. No other point was urged.

27. In view of the above, the present petition fails, and the same is dismissed.

28. Before parting, it is necessary to notice that the original respondent/present petitioner has made an averment in para-4 of the grounds of revision before the learned Revisional Court and in para-5(ii) of the petition before this Court that the

order passed by the learned Trial Court is the outcome of political influence. This is a very serious allegation levelled against an authority exercising the judicial function. Therefore, the petitioner shall file the proof in support of this averment within two weeks, and the matter be listed for this limited purpose after two weeks.

**(Rakesh Kainthla)**  
**Judge**

1<sup>st</sup> June, 2026  
(Chander)