IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.436 of 2015
Reserved on: 25.02.2026
Date of Decision: 16.03.2026.

State of H.P. ...Petitioner

Versus

Mohan Lal ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the Petitioner/State : Mr Prashant Sen, Deputy Advocate General

For the Respondent : Mr Karan Sharma, Advocate, vice Mr Atharv Sharma, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 12.03.2015, passed by learned Additional Sessions Judge-I, Kangra at Dharamshala, H.P. (Circuit Court at Nurpur) (*learned Appellate Court*), vide which the judgment dated 25.03.2010 passed by learned Judicial Magistrate, First Class, Court No. 1, Nurpur, District Kangra, H.P. (*learned Trial Court*) was upheld. *(Parties shall*

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

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 police presented a challan before the learned Trial Court against the accused for the commission of an offence punishable under Section 377 of the Indian Penal Code (IPC). It was asserted that the victim is the informant's son. The victim was aged 6 years and was studying in class two. The informant left his home to purchase medicine for his wife on 11.06.2009. He returned to his home and found that his sons were not present. He searched for them. The victim met him on the way, and he was crying. The informant asked the victim about the reason for crying, and he replied that the accused had taken him to a mango orchard and had sexually penetrated his anus. The informant asked the accused as to why he had done so. The accused assaulted the informant. The informant narrated the incident to the Ward Punch, Ram Lal (PW-1). He also narrated the incident to Pardhan, Sat Pal(PW-6), who expressed his inability to do anything in the matter. The informant went to the police station and reported the matter to the police. The police registered the F.I.R. (Ext.PW-2/A). Inspector/SHO Kamljeet Singh (PW-11) filed

an application (Ext.PW-11/A) for medical examination of the victim. Dr Shiv Darshan Singh (PW-12) examined the victim and found abrasion marks in the perianal region. He sealed the victim's knickers and handed it over to the police official accompanying the victim. He issued the MLC (Ext.PW-12/A). Inspector/SHO Kamaljeet (PW-11) went to the spot and prepared the site plan (Ext.PW-11/B). He arrested the accused and filed an application (Ext.PW-11/D) for medical examination of the accused. Dr Ashutosh Joshi (PW-5) examined the accused and found that there was nothing to suggest that the accused was incapable of performing sexual intercourse. He issued the report (Ext. PW-5/A). He preserved the pants of the accused, sealed it in a parcel and handed over the parcel to the police official accompanying the accused. The case property was sent to SFSL, Junga, and the result (Ext.PA) was issued, stating that human blood was found on the victim's knickers. Suresh Kumar (PW-4) issued an age certificate (Ext.PW-4/A) of the accused. Inspector/SHO Kamaljeet Singh (PW-11) filed an application (Ext.PW-11/E) for obtaining the birth certificate of the victim. Raj Kumar (PW-7) issued the birth certificate (Ext.PW-7/A). Statements of witnesses were recorded as per their version and

after completion of the investigation, the challan was was prepared and presented before the learned Trial Court.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of an offence punishable under Section 377 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined twelve witnesses to prove its case. Ram Lal (PW-1) was the Ward Punch to whom the incident was narrated. The victim's father (PW-2) and mother (PW-3) were told about the incident. Suresh Kumar (PW-4) issued the birth certificate of the accused Mohan Lal. Dr Ashutosh Joshi (PW-5) medically examined the accused. Sat Pal (PW-6) was the Pardhan. Raj Kumar (PW-7) issued the victim's birth certificate. The victim (PW-8) narrated the incident. HC Bir Singh (PW-9) was working as MHC with whom the case property was deposited. HHC Ranjeet Singh (PW-10) carried the case property to SFSL Junga. Inspector Kamaljeet (PW-11) investigated the matter. Dr Shiv Darshan Singh (PW-12) examined the victim.

5. The accused, in his statement, recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He

claimed that he was innocent, and witnesses deposed against him because of the enmity. He did not produce any evidence in his defence.

6. Learned Trial Court held that the victim admitted in his cross-examination that he was making the statement at his father's instance. Dr Shiv Darshan (PW-12) admitted that the injury noticed by him could be caused by scratching the anus with the finger. The relationship between the victim's father and the accused was strained. They had civil litigation. Sat Pal (PW-6), Pardhan, had asked the father of the accused to keep forty bags of cement, but he declined, which led to the deterioration of the relationship between the victim's father and Sat Pal. The parcel produced before the Court did not have a legible seal impression, and the integrity of the case property was not established; hence, the learned Trial Court acquitted the accused of the charged offence.

7 Being aggrieved by the judgment passed by the learned Trial Court, the State filed an appeal which was decided by the learned Additional Sessions Judge-I, Kangra, at Dharamshala, H.P. (learned Appellate Court). Learned Appellate Court concurred

with the findings recorded by the learned Trial Court that the victim's testimony was not reliable. He admitted that he was tutored by his father. The Medical Officer admitted that the injury noticed by him could have been caused by scratching the anus. Learned Trial Court was justified in doubting the prosecution's case; hence, the appeal was dismissed.

8. Being aggrieved by the judgments passed by the learned Courts below, the State has filed the present revision asserting that the learned Courts below failed to properly appreciate the statements of the victim and his father. These statements proved the prosecution's case beyond a reasonable doubt. They were corroborated by the medical evidence. Therefore, it was prayed that the present revision be allowed and the judgments passed by the learned Courts below be set aside.

9. I have heard Mr Prashant Sen, learned Deputy Advocate General, for the petitioner-State and Mr Karan Sharma, learned vice counsel representing the respondent/accused.

10. Mr Prashant Sen, learned Deputy Advocate General, for the petitioner-State, submitted that the learned Courts below erred in appreciating the evidence on record. The victim's

testimony proved the prosecution's case. His testimony was corroborated by the testimonies of his father, Ward Punch and Pardhan. Learned Courts below rejected the statements of prosecution witnesses because of the enmity, but the enmity is a double-edged weapon: while it furnishes a motive for false implication, it also furnishes a motive for the commission of a crime. In the present case, enmity furnished a motive for the commission of the crime. Therefore, he prayed that the present revision be allowed and the judgments passed by the learned courts below be set aside.

11. Mr Karan Sharma, Advocate, vice counsel representing the respondent/accused, submitted that the learned Courts below have properly appreciated the material on record. They have rightly held that the victim was tutored and his testimony could not be accepted. There is no infirmity in the findings recorded by the learned Courts below, and this Court should not interfere with the concurrent findings of fact. Therefore, 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 the 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.

14. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294,*** wherein it was observed:

> "**13.** The power and jurisdiction of the Higher Court under Section 397 Cr. P.C., 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 regularity 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 into such proceedings. It would be apposite to refer to the judgment of this court in ***Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460,*** where the scope of Section 397 has been considered and succinctly explained as under:

> "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 the 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 aforestated. Even the framing of a charge is a much-advanced stage in the proceedings under the 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, (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 for the purpose of satisfying 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 own 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 coming to the conclusion 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."

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 own 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 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 victim is the only witness to the incident. The learned Courts below rejected his testimony on the ground that he was tutored. Hence, it is necessary to re-appreciate his statement.

19. The victim stated that he knew the accused. The accused had sexually penetrated his anus. He cried, but nobody came, and he did not narrate the incident to any person. He was permitted to be cross-examined as he had resiled from his earlier

statement. He admitted that he and his brother were present at home. He denied that the accused came to his home and told him to accompany him to the mango orchard. He denied that he had accompanied the accused to the orchard. He admitted that the accused removed his knickers in the orchard and sexually penetrated his anus. He admitted that he cried, and his anus started bleeding. He admitted that he came to the house, and he was crying. He admitted that his father met him on the way and he had narrated the incident to him. He admitted that his father had taken him to the Police Station and hospital. He stated in his cross-examination by the defence that his father was present in the Court. He admitted that he was making the statement at the instance of his father that the accused had taken him to the orchard where he (accused) had removed his knickers and sexually penetrated his anus.

20. The statement made by the victim in the cross-examination that he was making the statement at his father's instance that the accused had taken him to the orchard where he (the accused) had removed his knickers and sexually penetrated his anus shows that he was tutored to state this fact. It was laid down by the Hon'ble Supreme Court in ***Chhagan Dame v. State of***

Gujarat*, *1995 SCC (Cri) 182, that where a child witness is found to be tutored, no reliance can be placed upon his testimony. It was laid down by the Hon'ble Supreme Court in ***Digamber Vaishnav v. State of Chhattisgarh*, *(2019) 4 SCC 522: (2019) 2 SCC (Cri) 300: 2019 SCC OnLine SC 316*** that evidence of a child witness must be evaluated carefully, as the child may be swayed by what others tell him and he is an easy prey to tutoring. It was observed at page 529:

> **22.** This Court has consistently held that evidence of a child witness must be evaluated carefully, as the child may be swayed by what others tell him, and he is an easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is more a rule of practical wisdom than law. [See ***Panchhi* v. *State of U.P.* [*Panchhi* v. *State of U.P.*, (1998) 7 SCC 177: 1998 SCC (Cri) 1561], *State of U.P.* v. *Ashok Dixit* [*State of U.P.* v. *Ashok Dixit*, (2000) 3 SCC 70: 2000 SCC (Cri) 579]** and ***State of Rajasthan* v. *Om Prakash* [*State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210]**.]

21. This position was reiterated in ***State of M.P. v. Balveer Singh, (2025) 8 SCC 545: 2025 SCC OnLine SC 390***, wherein it was observed at page 587:

> "**43.** From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness, as long as the child is found to be competent to testify. The only precaution which the court should take while assessing the

evidence of a child witness is that such a witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness, the courts are required to assess whether the evidence of such a witness is its voluntary expression and not borne out of the influence of others, and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.

******

67.10. The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony: (*i*) improvisation or (*ii*) fabrication.

(*i*) Improvisation in testimony whereby facts have been altered, or new details are added inconsistent with the version of events not previously stated, must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted, there is no further need to prove the contradiction. If the witness denies the omission or contradiction, the same has to be proved in the deposition of the investigating officer by proving that part of the police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be

relied upon as evidence in terms of Section 11 of the Evidence Act.

(*ii*) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors has to be established being as under:

- ***Opportunity of tutoring of the child witness in question***—whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such a witness or that the presence of such a witness was doubtful, or by imputing any motive on the part of such a witness to depose falsely, or the susceptibility of such a witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.
- ***Reasonable likelihood of tutoring***—wherein the foundational facts suggesting a possibility of tutoring, as established, have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence-lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural."

22. In the present case, the victim admitted that he was making the statement regarding sexual penetration at his father's instance. This is the core of the prosecution's case, and any admission regarding tutoring of the core of the prosecution's case will make the prosecution's case doubtful.

23. The informant admitted in his cross-examination that the accused is the son of Bansi. He admitted he had partition proceedings pending against Bansi. He admitted that Sat Pal (PW-6) had a dispute with the father of the accused. Thus, the learned Courts below had rightly held that the testimonies of prosecuting witnesses were required to be seen with due care and caution because of the enmity, and once there was an admission of tutoring, the learned Courts below were justified in doubting the prosecution's case.

24. A heavy reliance has been placed upon the evidence of the Medical Officer, who had found abrasion on the perianal region. Dr Shiv Darshan Singh (PW-12) admitted in his cross-examination that the abrasion could have been caused by scratching the region with the finger. Thus, the medical evidence

does not provide unequivocal corroboration of the prosecution's version.

25. Dr Ashutosh Joshi (PW-5) did not find any scratch/injury on the penis of the accused. He specifically stated that he had not found any blood or injury on the penis of the accused. The presence of the injury would have corroborated the victim's version regarding sexual penetration by the accused, and its absence will make the prosecution's case suspect.

26. The other witnesses examined by the prosecution had not witnessed the incident. The victim told his father about the incident, and he told the other people. They are not eyewitnesses, and at best their testimonies could have been used to corroborate the victim's testimony, but once the victim's testimony is found to be not credible, the testimonies of other witnesses will not prove the prosecution's case.

27. Therefore, there is no infirmity in the judgment of the learned Courts below requiring any interference from this Court.

28. No other point was urged.

29. In view of the above, the present revision fails and is dismissed. Pending applications, if any, also stand disposed of.

30. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- 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 respondent/accused on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

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

(Rakesh Kainthla)
Judge

16th March, 2026.
(ravinder)