
(2025) 04 SHI CK 1100
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 223 Of 2024

Baljit Singh

APPELLANT

Vs

State Of H.P.

RESPONDENT

Date of Decision : 03-04-2025

Acts Referred:

Citation : (2025) 04 SHI CK 1100

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : G.R. Palsra, Pushpinder Jaswal

Final Decision : Dismissed

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the judgment dated 07.03.2024 passed by learned Sessions Judge Una (Learned Appellate Court) in Criminal Appeal No. 34/2023 vide which the judgment of conviction and order of sentence dated 7.2.2023 passed by learned Judicial Magistrate Court, no. 2 Amb, District Una (learned Trial Court) was partly upheld. The petitioner (accused before the learned Trial Court) was convicted of the commission of offences punishable under Sections 341, 323 and 325 of the Indian Penal Code and the matter was remanded to the learned Trial Court for considering the case of the petitioner for granting the probation under Section 4 Probation of Offenders Act. (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 revision are that the police presented a challan against the accused for the commission of offences punishable under sections 341, 323, 325, 504 and 506 read with Section 34 of the Indian Penal Code (IPC). Learned Trial Court framed the charges against the accused, recorded the prosecution's evidence and convicted them as under:

Accused No.1:

Under Section 323 of IPC

To suffer rigorous imprisonment for a period of one month and to pay a fine of ☐ 1,000/- and in default of payment of fine, to undergo simple imprisonment for 15 days.

Under Section 325 of IPC

To suffer rigorous imprisonment for a period of three months and to pay a fine of ☐ 3,000/- and in default of payment of fine, to undergo simple imprisonment for one month.

Under Section 341 of IPC

To suffer simple imprisonment for a period of one month and to pay a fine of ☐ 500/- and in default of payment of fine, to undergo simple imprisonment for one week.

Under Section 504 of IPC

To suffer rigorous imprisonment for a period of two months and to pay a fine of ☐ 1,000/- and in default of payment of fine, to undergo simple imprisonment for one month.

Under Section 506 of IPC

To suffer rigorous imprisonment for a period of three months and to pay a fine of ☐ 1,000/- and in default of payment of fine, to undergo simple imprisonment for one month.

Under Section 504 of IPC

To pay a fine of ☐ 1,000/- and in default of payment of fine, to undergo simple imprisonment for 15 days.

Under Section 506 of IPC

To pay a fine of ☐ 1,000/- and in default of payment of fine, to undergo simple imprisonment for 15 days.

3. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by learned Sessions Judge Una. (learned Appellate Court). Learned Appellate Court allowed the appeal filed by accused Balwinder Kaur and acquitted her of the charged offences. Learned Appellate Court partly allowed the appeal filed by accused Baljeet Singh and acquitted him of the commission of offences punishable under Sections 504 and 506 read with Section 34 of IPC and maintained the conviction recorded by the learned Trial Court for the commission of offences punishable under sections 341, 323 and 325 of IPC. The learned Appellate Court set aside the sentence awarded by the Trial Court and remitted the matter to the learned Trial Court for

considering the benefit of Section 4 of the Probation of Offenders Act to convict Baljeet Singh after calling the report of the Probation officer.

4. Being aggrieved by the judgment passed by learned Appellate Court, the accused has filed the present revision asserting that the learned Appellate Court committed a jurisdictional error by remitting the matter to the learned Trial Court for considering the benefit under Section 4 of the Probation of Offenders Act. The learned Appellate Court could have granted the benefit itself instead of remitting the matter to the learned Trial Court. Hence, it was prayed that the present revision be allowed and the judgment passed by the learned Appellate Court be set aside.

5. I have heard Mr Divya Raj Singh, learned counsel for the petitioner, and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State. Mr Divya Raj Singh, Learned Counsel for the petitioner, submitted that the learned Appellate Court erred in remitting the matter to the learned Trial Court for deciding the question of granting the probation. The learned Appellate Court was competent to grant the benefit of the probation itself and should have decided the matter instead of remitting it to the learned Trial Court. He prayed that the present revision be allowed and the judgment passed by the Appellate Court be set aside.

6. Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the learned Appellate Court had rightly remitted the matter to the learned Trial Court; hence, he prayed that the present revision be dismissed.

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

8. 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 on 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 to 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.

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

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

11. The learned Appellate Court confirmed the conviction of the revisionist and remitted the matter to the learned Trial Court for considering the benefit of the Probation of Offenders Act. A similar situation arose before Delhi High Court in *Suresh v. State*, 1995 SCC OnLine Del 178: 1995 Cri LJ 3741 wherein the learned Appellate Court confirmed the conviction of the accused and remitted the matter to learned Trial Court for considering the benefit of granting the

probation. It was held that the Appellate Court had no jurisdiction to confirm the conviction and remit the matter to the trial court for considering the benefit of granting the probation. Learned Appellate Court could have granted the benefit itself. It was observed at page 3742 under:

"11. Therefore, I have to see as to whether the provisions of the Code of Criminal Procedure permit the Additional Sessions Judge to partly confirm the order of the Metropolitan Magistrate and partly set aside the order of the learned Metropolitan Magistrate. If the provisions of the Code of Criminal Procedure are considered then it will be quite clear that if an accused is convicted, he is to prefer an appeal against the order of conviction and sentence. Only in those cases covered by Sections 375 and 377, Cr. P.C. an appeal against the order of sentence could be preferred. Section 375, Cr. P.C. provides that where an accused person, who has pleaded guilty and has been convicted on such a plea can prefer an appeal only to the extent or legality of the sentence. Section 377, Cr. P.C. empowers the State Government to prefer an appeal to the High Court against the sentence on the grounds of inadequacy of the sentence.

12. The case of the revision applicant does not fall within the purview of either Section 375 or Section 377, Cr. P.C.

13. In the case of *Pratul Chaudhary v. State*, 1978 CLR 98, a learned Single Judge of this High Court had dealt with a similar case and it has been held that a Sessions Judge i.e. the appellate Court has no power of remission except for the purpose of retrial and remand for the purpose of hearing the accused on the question of sentence is not within the jurisdiction of a Sessions Court. Once the appeal is admitted, the Sessions Court has to decide the appeal as a whole and has to confirm or set aside the order of conviction as well as sentence simultaneously. It is not open for the Sessions Judge to confirm only the order of conviction set aside the order of sentence and remand the matter to the trial Court. It must be remembered that in a criminal case, the only real issue is as to whether the accused is guilty of the offence with which is charged. Once he is found guilty the sentence must follow. The order of sentence is not a distinct and separate issue. A criminal case is not like a civil case. In civil cases number of issues are arising. Hence in a civil appeal, it is open to the Appellate Court to confirm the finding on some issue and remand the suit to the trial Court to reconsider or consider other issues involved in that civil case. But in the civil Appeal, there could not be a remand to consider the issue on the question of costs of a civil case. Similarly, in criminal appeals, there could not be a remand of a case to the trial Court for consideration question of sentence.

14. The learned Additional Sessions Judge has not taken into consideration the provisions of Section 11, of the said Act. The said Section 11 runs as under:

11. Courts competent to make an order under the Act, appeal and revision and powers of Courts in appeal and revision— (1) Notwithstanding anything contained in the Code or any other law, an order under this Act may be made by

any Court empowered to try and sentence the offender to imprisonment and also by the High Court or any other Court when the case comes before it on appeal or in revision.

(2) Notwithstanding anything contained in the Code, where an order under Section 3 or Section 4, is made by any Court trying the offender (other than a High Court) an appeal shall lie to the Court to which appeals ordinarily lie from the sentences of the former Court.

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the Court by which he is found guilty declines to deal with him under Section 3, or Section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the Court to which appeals ordinarily lie from the sentences of the former Court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under Section 3, or Section 4, in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the Court by which the offender was found guilty."

15. If the above provisions of sub-section (1) of Section 11, are considered then it would be quite clear that an order under the provisions of the Act could be made by the appellate Court as well as the revisional Court. Therefore, if the learned Additional Sessions Judge had felt that the report of the Probation Officer ought to have been called and considered by the trial Court, then he ought to have called the said report himself and then dispose of the appeal by passing the necessary order in respect of the sentence along with the order of confirming the conviction.

16. Thus, it would be quite clear that the order passed by the learned Additional Sessions Judge by maintaining the order of conviction setting aside the order of sentence and remanding the matter to the trial Court only to consider the question of sentence is illegal. The said order is not supported by any provisions of law. It is open for an appellate Court to remand the matter to the trial Court for re-trial as a whole but it is not open for an appellate Court to only remand the matter to the trial Court for the purpose of considering the question of sentence because the Code of Criminal Procedure does not provide any right of appeal except the cases covered by Sections 375 and 377 to a person. Such an improper and illegal order of remanding the matter to the trial Court only to consider the question of sentence would be depriving the fundamental right of an

accused person to prefer an appeal against the order of sentence. Thus, I hold that the order of Additional Sessions Judge passed by him on 2-8-1980 is illegal and invalid and the consequential order passed by the learned Metropolitan Magistrate on the strength of the said order of Additional Sessions Judge passed on 2-8-80 is also illegal and invalid.”

12. I respectfully agree with the judgment of the Delhi High Court and hold that it is not permissible for an Appellate Court to confirm the conviction of the accused and remit the matter to the learned Trial Court for deciding the question of granting the probation. The learned Appellate Court erred in confirming the conviction of the petitioner/accused and remitting the matter to the learned Trial Court to decide the question of granting the benefit of probation to him. Hence, the judgment passed by the learned Appellate Court cannot be sustained.

13. Consequently, the present revision is allowed, and the judgment passed by learned Appellate Court remitting the matter to learned Trial Court is set aside. The matter is remitted to the learned Appellate Court to consider the benefit of probation to the petitioner itself as per the law. The parties, through their respective counsel, are directed to appear before the learned Appellate Court on 28th April, 2025.

14. The record be sent back forthwith, so as to reach the court well before the date fixed.

15. The present petition stands disposed of and so are the miscellaneous applications if any.