2025:HHC:21728

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 293 of 2022
Reserved on: 28.6.2025
Date of Decision: 08.07.2025

Tejinder Singh ...Petitioner

Versus

Govinder Singh and another ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioner	:	Mr. R.L. Sood, Senior Advocate, with Mr. Y.P. Sood, Advocate.
For Respondent No.1	:	Mr. Ajay Kochhar, Senior Advocate, with Mr. Varun Chauhan, Advocate.
For Respondent No.2	:	Mr. Rajiv Sirkeck, Advocate.
For respondent No.3/State	:	Mr. Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 30.11.2021, passed by learned Sessions Judge, (Forests), Shimla, District Shimla, H.P. (learned Appellate Court), vide which the judgment dated 28.8.2015, passed by learned Judicial Magistrate First Class, Court No.6, Shimla, H.P. (learned Trial

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

Court) was upheld. *(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 filed a charge sheet before the learned Trial Court against the accused for the commission of offences punishable under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code (IPC).

3. It was asserted that the complainant, Tejinder Singh (PW1), made a complaint (Ex.PW1/A) stating that the accused, Govinder Singh, purchased two parcels of land in Village Durgapur, Pargana Chota bal, Tehsil Suni, District Shimla, HP, vide two separate sale deeds dated 10.4.2008 and 24.6.2008. Two Krishak Praman Patras (agriculturist certificates)-one dated 13.11.2007 and another dated 10.6.2008, were attached to the sale deeds. One Krishank Praman Patra, dated 13.11.2007, was purportedly issued by the Patwari, Patwar Circle Malat, Sub Tehsil Kupvi, District Shimla and another Krishak Praman Patra, dated 10.6.2008, was purportedly issued by Patwari Patwar Circle Madhana. Ram Lal Sharma (PW2) was posted as Patwari in Charoli on 13.11.2007. He did not issue the Krishak Praman Patra

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and stated that Govinder Singh did not own any land in Chak Dochi, Patwar Circle Malat, Sub Tehsil Kupvi. Similarly, Lachmi Singh (PW20), who is stated to have issued Krishak Praman Patra, dated 10.4.2008, denied that he had issued Krishak Praman Patra. There was no Chak Dochi in Patwar Circle, Malat. Govinder Singh did not have any land in Village Dochi, Patwar Circle Malat, and he was not a resident of said place. Govinder Singh was not a bona fide agriculturist, and he fabricated Krishak Praman Patras dated 13.11.2007 and 10.6.2008 attached to the sale deeds dated 10.4.2008 and 24.6.2008. He had no right to purchase the land as per the provisions of Section 118 of the H.P. Tenancy and Land Reforms Act (Tenancy Act). Therefore, it was prayed that the action be taken as per the law.

4. The police registered an FIR and conducted the investigation. SI Shyam Sunder (PW27) conducted the initial investigation. He wrote an application (Ex.PW27/A) to inquire whether Village/Chak Dochi falls within the jurisdiction of Patwar Circle Madhana. Udey Singh (PW14), Naib Tehsildar, issued a report (Ex.PW14/A) that the said chak did not fall in the Patwar Circle of Madhana. Inspector Shyam Sunder also obtained a certificate (Ex.PW25/D) from the Patwari. Inspector Shyam

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Sunder wrote another application (Ex.PW27/B) to Naib Tehsildar, Kupvi, to inquire whether Govinder Singh was a resident of Village Dochi and whether he had any land in the village. A letter (Ex.PW15/A) was issued by Mela Ram, Patwari that Govinder Singh does not own any land in Mohal Dochi. Inspector Shyam Sunder filed an application (Ex.PW27/C) for obtaining copies of the mutation from the Tehsildar, Suni. Karam Singh, Naib Tehsildar (PW21), issued certified copies of mutation no. 110 (Ex.PW21/A and Ex.PW21/A1) and mutation no. 111 (Ex.PW21/B and Ex.PW21/B1). Certified copies of the sale deeds (Ex.PW11/B and Ex.PW11/C) were also obtained. Jai Singh (PW28) conducted further investigation. He interrogated Govinder Singh, who revealed that Rajinder Maheshwari had prepared the Krishak Praman Patra. Rajinder Maheshwari revealed during interrogation that he had talked to Kahan Chand (accused), and Kahan Chand had got the certificates prepared by Mast Ram, Patwari. It was found that Mast Ram had died. Puran Chand was associated, and a search of the house of Mast Ram was conducted. An application (Ex.PW4/A) was recovered, which was seized vide memo (Ex.PW3/A). An application (Ex.PW18/A) was filed to obtain the death certificate of Mast Ram, and death

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certificate (Ex.PW18/B) was issued. Rapat Rojnamcha (Ex.PW4/C) was seized vide memo (Ex.PW4/B). Rapat Rojnamcha of the year 2007-08 (Ex.PW24/A) was seized vide memo (Ex.PW17/A). The seal impressions (Ex.PW25/E1, Ex.PW25/E2 and Ex.PW17/B) were taken on separate pieces of paper. Original Krishak Praman Patra (Ex.PW11/A) and its photocopy (Mark-A) were seized vide memo (Ex.PW5/A). Two admitted handwriting of Devinder Singh and Rajinder Maheshwari were seized vide memos (Ex.PW10/B and Ex.PW10/C). The standard handwriting of Govinder Singh (Ex.PW10/B) and Rajinder Maheshwari (Ex.PW10/D1 to Ex.PW10/D4) were seized vide memos (Ex.PW10/B and Ex.PW10/C). Specimen signatures and handwriting of Kahan Chand (Ex.PXY-1 to Ex.PXY-14) were obtained in the presence of learned Judicial Magistrate First Class. These were sent to FSL, Junga, and the results (Ex.PW25/F and Ex.PW25/G) were issued. The statements of witnesses were recorded as per their version, and after completion of the investigation, a challan was prepared and presented before the learned Trial Court.

5. Learned Trial Court charged accused Govinder Singh with the commission of offences punishable under Sections 120-B, 420, 467, 468 and 471 of IPC and accused Kahan Chand with

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the commission of offences punishable under Sections 120-B, 201, 467 and 468 of IPC, to which they pleaded not guilty and claimed to be tried.

6. The prosecution examined 28 witnesses to prove its case. Tejinder Singh (PW1) is the complainant/informant. Ram Lal Sharma (PW2) was posted as Patwari in Patwar Circle, Malat. Begmu Devi (PW3) is the wife of Mast Ram and the witness to the recovery. Puran Chand (PW4) is the witness to the search of the house of Mast Ram. Hans Raj (PW5) is the witness of the recovery of Krishak Praman Patra. Manohar Lal (PW6) is the seller of the land. Padam Singh (PW7) was posted as Naib Tehsildar/Sub Registrar, Suni. He registered the sale deed. Ram Lal (PW8) is the witness to the recovery of Krishak Praman Patra by the police. Maan Singh (PW9) was posted as Tehsildar/Sub Registrar, Suni, who registered the sale deed. HC Shiv Kumar (PW10) is the witness to recovery. Hem Singh (PW11) was posted as a Registration Clerk who produced Krishak Praman Patra. Bhoom Prakash (PW12) is the witness to the sale deed. Diwan Singh (PW13) identified Manohar Lal as the seller before the Sub Registrar. Uday Singh (PW14) was posted as Naib Teshildar and issued the report. Mela Ram (PW15) was posted as Patwari in

Patwar Circle, Kupvi and issued the report. Prem Prakash (PW16) did not support the prosecution's case. Tilak Raj (PW17) is the witness to recovery. Dharam Prakash (PW18) was posted as Secretary and is the witness of the recovery of the death certificate. HC Shiv Kumar (PW19) sent the documents to FSL for comparison. Lachmi Singh (PW20) was posted as Patwari in Patwar Circle, Madhana, and proved that he had not issued Krishak Praman Patra in favour of Govinder Singh. Karam Singh (PW21) produced certified copies of Mutation Nos. 110 and 111. Rajinder Dutt (PW22) was posted as Naib Tehsildar, Kupvi and issued a report regarding the land owned by Govinder Singh. Bal Krishan (PW23) introduced Govinder Singh to Manohar Lal and witnessed the sale deed. HHC Tek Singh (PW24) is the witness to the recovery of Rojnamcha. Dr. Jagjit Singh (PW25) is the Scientific Officer who examined the documents. ASI Dilu Ram (PW26) proved the FIR. Inspector Shyam Sundar (PW27) and Jai Singh (PW28) conducted the investigation.

7. The accused, in their statements recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. Accused Kahan Chand stated that he had never met accused Govinder Singh, and he was not posted at Madhana or

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Malat. A false case was made against him. Accused Govinder Singh admitted that he had purchased the land from Manohar Lal. A Sale Deed was executed in his favour. He denied that he had produced the agriculturist certificate. He stated that a false case was made against him by Tejinder Singh, who is his brother. He had left the country in 1979. The informant tried to grab his share in Knollswood, Chhotta Shimla. This property was purchased by his father on 26.11.1956. A portion of the property was sold on 8.1.1980 to the Himachal Pradesh Housing Board. He was recorded as the owner of the sold property. The sold property was also recorded as forest, trees, and orchard that existed over the land. Grass and usufructs were also sold. The entire land was agricultural property. On 30.9.1988 and 12.9.2014. The Government issued two notifications vide which he became an agriculturist. Several criminal and civil litigations were pending between him and the informant. He and the informant were agriculturists, and this fact was not investigated by the police. The police did not consider the material which was provided by him. Rajinder Maheshwari was appointed as a Special Power of Attorney. He connived with the informant. Statements of Leela

Sandal (DW1), Jai Ram (DW2), Constable Madan Lal (DW3), Geeta Ram (DW4) and Krishankant (DW5) were recorded in defence.

8. Learned Trial Court held that Manohar Lal nowhere stated that accused Govinder Singh had deceived him or dishonestly induced him to sell the property. Rather, he stated that he had sold the property to Govinder Singh for valid consideration. The prosecution's case that Krishak Praman Patra was produced along with sale deeds was highly doubtful. As per the witnesses, the documents are pasted on the file; however, the memo (Ex.PW5/A) mentioned the word 'Nathi', which means tagged. This made the whole case doubtful that Krishak Praman Patras were attached to the sale deeds. The link evidence was not proved, and the integrity of the case property from the time of seizure till analysis was not established. Therefore, it was not possible to rely upon the report of the FSL. Hence, the accused were acquitted.

9. Being aggrieved by the judgment of the learned Trial Court, the State filed an appeal which was decided by the learned Sessions Judge (Forests), Shimla (learned Appellate Court), who concurred with the findings recorded by the learned Trial Court that Manohar Lal was not cheated by Govinder Singh. It was not

proved on record that agriculture certificates were annexed to the sale deed. The integrity of the case property was not established, and it was not possible to rely upon the report of FSL. Learned Trial Court had taken a reasonable view, and no interference was required with the judgment passed by the learned Trial Court. Hence, the appeal was dismissed.

10. Being aggrieved by the judgments passed by learned Trial Courts below, the complainant has filed the present revision asserting that learned Courts below recorded their findings by ignoring the material evidence on record. It was specifically proved on record that the forged agricultural certificate (Mark-A and Ex.PW11/A) were produced with the sale deeds before the Sub Registrars Padam Singh (PW7) and Maan Singh (PW9). They signed the certificates. The certificates were stated to have been issued by the Patwaris and countersigned by Naib Tehsildar. Ram Lal Sharma (PW2) and Lachmi Singh (PW20) categorically stated that they never issued any agriculturist certificate in favour of the accused Govinder Singh. Mela Ram (PW15) also stated that the accused did not own any land in Nerwa. The learned Courts below did not appreciate this aspect. Proceedings for violation of Section 118 of the H.P.

Tenancy and Land Reforms Act were initiated against the accused before the District Collector, Shimla, who conducted a detailed inquiry and concluded that the agriculturist certificates were forged. Hem Singh (PW11) proved that the certificates were taken from the official records. Learned Courts below erred in holding that the certificates were not mentioned in the list of documents and the statements of the Sub Registrars could not be relied upon. Sub-Registrars categorically stated that certificates were produced at the time of registration of the sale deed. Learned Trial Court failed to assign legal reasons while acquitting the accused, and the learned Appellate Court failed to exercise the jurisdiction vested in it. The appeal was decided in a slipshod manner. Statement of Jagjit Singh, Handwriting Expert, was wrongly ignored. Opportunity of hearing was denied to the informant by the learned Appellate Court. Therefore, it was prayed that the present revision be allowed, the judgments passed by learned Courts below be set aside, and the accused be convicted of the commission of the charged offences.

11. An application (Cr.MP No. 1517 of 2023) for producing a certified copy of the order dated 23.7.2014, passed by the

learned District Collector, Shimla, was also filed, which was opposed by the accused.

12. I have heard Mr. R.L. Sood, learned Senior Counsel assisted by Mr. Y.P. Sood, learned counsel for the petitioner/informant, Mr. Ajay Kochhar, learned Senior Counsel, assisted by Mr. Varun Chauhan, learned counsel, for respondent/accused No.1, Mr. Rajiv Sirkeck, learned counsel for respondent no. 2/accused No.2 and Mr. Ajit Sharma, learned Deputy Advocate General, for respondent No.3/State.

13. Mr. R.L. Sood, learned Senior counsel for the petitioner/informant, submitted that the learned Courts below erred in appreciating the evidence. They held that Govinder Singh had not cheated the seller Manohar Lal. The prosecution never projected the case before the learned Courts below that the accused, Govinder Singh, had cheated Manohar Lal. Rather, the case was that Govinder Singh had produced the forged agriculturist certificates and got the sale deed registered, which could not have been registered in his favour. The State of Himachal Pradesh was cheated in this manner. Sub-Registrars categorically stated that the certificates were annexed to the sale deeds. These were seized by the police from the office of the Sub

Registrar. The accused came with the defence that the agriculturist certificates were implanted by the complainant/informant, and the burden was upon him to prove this fact. They even led the evidence, but it was not sufficient to prove their defence. Learned Courts below have taken a perverse view, and this Court should interfere with the same by setting aside the judgments. He relied upon the judgments titled ***Virender Sharma Vs. Neeraj Kumar 2024:HHC:6379*** and ***Joseph Stephen and others Vs. Santhanasamy and others, Criminal Appeal Nos. 90-93 of 2022, decided on 25.1.2022*** in support of his submission.

14. Mr. Ajay Kochhar, learned Senior Counsel for respondent/accused No.1 submitted that respondent/accused No.1 is innocent and he was falsely implicated due to the property dispute between the informant and accused No.1. It is undisputed that the father of the informant and accused No.1 was the owner of the property known as Knollswood. Therefore, as per the clarification issued by the State Government, the accused No.1 was an agriculturist. The Sub Registrars categorically stated that they had seen the documents of Knollswood and had satisfied themselves about the agriculturist status of accused No.1. It was not proved on record that agriculturist certificates were

produced with the sale deed. The petitioner has sought the conviction of the accused, which is not permissible in a revision against acquittal. Therefore, he prayed that the present petition be dismissed. He relied upon the judgments titled ***Mahabir and others Vs. State of Haryana 2025:INSC:120, Bindeshwari Prasad Singh Vs. State of Bihar 2002 (6) SCC 650, Joseph Stephen and others Vs. Santhanasamy and others 2022 SCC OnLine SC 90, Malkeet Singh Gill Vs. State of Chhattisgarh 2022 (8) SCC 204, Kishan Rao Vs. Shankargouida 2018 (8) SCC 165, State of Gujarat Vs. Dilip Singh Kishor Singh Rao 2023 (17) SCC 688, Surender Sharma Vs. State, 2025 0 Supreme (HP) 280*** and ***Joginder Singh Vs. Ramesh Chauhan, 2025 0 Supreme (HP) 252*** in support of his submission.

15. Mr. Rajiv Sirkeck, learned counsel for respondent/accused No.2, submitted that there is no evidence against accused No.2, Kahan Chand. The report of the handwriting expert is not sufficient to record a conviction. The integrity of the case property was not established. Therefore, he prayed that the present petition be dismissed. He relied upon the judgment titled ***Murarilal v. State of M.P. AIR 1980 SC 531*** in support of his submission.

16. Mr. Ajit Sharma, learned Deputy Advocate General, for the respondent-State, supported the submissions of Mr. R.L. Sood, learned Senior Counsel for the petitioner/informant.

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

18. Before adverting to the merits of the revision, it is necessary to dispose of an application (Cr.MP No. 1517 of 2023) for placing on record the order dated 23.07.2014 passed by the District Collector in the proceedings initiated under Section 118 of the Tenancy Act. This order was passed on 23.7.2014. Learned Trial Court delivered the judgment on 28.8.2015, and learned Appellate Court delivered the judgment on 30.11.2021. Therefore, this document was in existence at the time of delivery of the judgments by the learned Trial Court and the learned Appellate Court.

19. The application was filed under Section 482 of Cr.P.C., whereas it should have been filed under Section 391 of Cr.P.C., which deals with the additional evidence and applies to the revision as per Section 401 (1) of CrPC.

20. It was laid down by the Hon'ble Supreme Court in ***State of Rajasthan v. Asharam, 2023 SCC OnLine SC 423***, that

Sections 311 and 391 of Cr. P.C. deal with the power of the Court to take additional evidence. Section 311 deals with the trial, while Section 391 deals with the appeal. The Appellate Court can examine the evidence, but it does not possess the wide powers conferred upon the Trial Court. It was observed:

> "6. Both Sections 311 and 391 of the Cr. P.C. relate to the power of the court to take additional evidence; the former at the stage of trial and before the judgment is pronounced; and the latter at the appellate stage after judgment by the trial court has been pronounced. It may not be totally correct to state that the same considerations would apply to both situations, as there is a difference in the stages. Section 311 of the Cr. P.C. consists of two parts; the first gives power to the court to summon any witness at any stage of inquiry, trial or other proceedings, whether the person is listed as a witness, or is in attendance though not summoned as a witness. Secondly, the trial court has the power to recall and re-examine any person already examined if his evidence appears to be essential to the just decision of the case. On the other hand, the discretion under Section 391 of the Cr. P.C. should be read as somewhat more restricted in comparison to Section 311 of the Cr. P.C., as the appellate court is dealing with an appeal, after the trial court has concluded with regard to the guilt or otherwise of the person being prosecuted. The appellate court can examine the evidence in depth and detail, yet it does not possess all the powers of the trial court, as it deals with cases wherein the decision has already been pronounced."

21. It was laid down in ***Sukhjeet Singh v. State of U.P.*, *(2019) 16 SCC 712: (2020) 2 SCC (Cri) 434: 2019 SCC OnLine SC 72***, that the additional evidence can be taken by the Appellate Court if

the evidence is necessary for just determination of the case, however, Section 391 cannot be used for retrial. The order should not be made if the party had sufficient opportunities and had not availed itself. It was observed at page 721:

> "**22.** Chapter XXIX of the Code of Criminal Procedure, 1973 deals with "Appeals". Section 391 CrPC empowers the appellate court to take further evidence or direct it to be taken. Section 391 is as follows:
>
> > "**391.** ***The appellate court may take further evidence or direct it to be taken***. — (1) In dealing with any appeal under this Chapter, the appellate court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the appellate court is a High Court, by a Court of Session or a Magistrate.
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> > (2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the appellate court, and such court shall thereupon proceed to dispose of the appeal.
> >
> > (3) The accused or his pleader shall have the right to be present when the additional evidence is taken.
> >
> > (4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."
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> **23.** The key words in Section 391(1) are "if it thinks additional evidence to be necessary". The word "necessary" used in Section 391(1) is to mean necessary for deciding the appeal. The appeal has been filed by the accused, who have been convicted. The powers of the appellate court are contained in Section 386. In an appeal

from a conviction, an appellate court can exercise power under Section 386(*b*), which is to the following effect:

> "**386. (*b*)** In an appeal from a conviction—
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> (*i*) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a court of competent jurisdiction subordinate to such appellate court or committed for trial, or
>
> (*ii*) alter the finding, maintaining the sentence, or
>
> (*iii*) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;"

24. Power to take additional evidence under Section 391 is, thus, with an object to appropriately decide the appeal by the appellate court to secure ends of justice. The scope and ambit of Section 391 CrPC has come up for consideration before this Court in ***Rajeswar Prasad Misra v. State of W.B. [Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887: (1965) 2 Cri LJ 817]*** Hidayatullah, J., speaking for the Bench held that a wide discretion is conferred on the appellate courts and the additional evidence may be necessary for a variety of reasons. He held that additional evidence must be necessary not because it would be impossible to pronounce judgment but because *there would be a failure of justice without it*. The following was laid down in paras 8 and 9: (AIR p. 1892)

> "*8.* ... Since a wide discretion is conferred on appellate courts, the limits of that court's jurisdiction must obviously be dictated by the exigency of the situation and fair play and good sense appear to be the only safe guides. There is, no doubt, some analogy between the power to order a retrial and the power to take additional evidence. The former is an extreme step appropriately taken if additional evidence will not suffice. Both actions subsume failure of justice as a condition precedent. There, the resemblance ends, and it is hardly proper to construe one section with the aid of observations

made by this Court in the interpretation of the other section.

9. Additional evidence may be necessary for a variety of reasons, which it is hardly necessary (even if it were possible) to list here. We do not propose to do what the legislature has refrained from doing, namely, to control the discretion of the appellate court under certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be a failure of justice without it. The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused, as, for example, it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise."

25. This Court again in ***Rambhau v. State of Maharashtra [Rambhau v. State of Maharashtra, (2001) 4 SCC 759: 2001 SCC (Cri) 812]*** had noted the power under Section 391 CrPC of the appellate court. The following was stated in paragraphs 1 and 2: (SCC p. 761)

"*1.* There is a very wide discretion available in the matter of obtaining additional evidence in terms of Section 391 of the Code of Criminal Procedure. A plain look at the statutory provisions (Section 391) would reveal the same...

2. A word of caution, however, ought to be introduced for guidance, to wit: that this additional evidence cannot and ought not to be received in such a way as to cause any prejudice to the accused. It is

not a disguise for a retrial or to change the nature of the case against the accused. This Court in ***Rajeswar Prasad Misra v. State of W.B. [Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887: (1965) 2 Cri LJ 817]*** in no uncertain terms observed that *the order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it.* This Court was candid enough to record, however, that it is the concept of justice which ought to prevail, and in the event, the same dictates exercise of power as conferred by the Code, there ought not to be any hesitation in that regard."

26. From the law laid down by this Court as noted above, it is clear that there are no fetters on the power under Section 391 CrPC of the appellate court. All powers are conferred on the court to secure the ends of justice. The ultimate object of judicial administration is to secure the ends of justice. The court exists for rendering justice to the people." (Emphasis supplied)

22. This position was reiterated in ***State (NCT of Delhi) v. Pankaj Chaudhary*, *(2019) 11 SCC 575: (2019) 4 SCC (Cri) 264: 2018 SCC OnLine SC 2256***, and it was held that this power should not be exercised to fill up the gaps by the other side and especially to reverse the judgment of learned Trial Court. It was observed at page 586:

"25. The High Court observed that the trial court erred in saying that the accused failed to prove the making of previous complaints against the prosecutrix. While saying so, the High Court referred to certain complaints made against the prosecutrix, including the one allegedly given on 21-7-1997, which were produced by the Bar at the time of arguments. The power conferred under Section 391 CrPC is to be exercised with great care and caution. In dealing

> with any appeal, the appellate court can refer to the additional evidence only if the same has been recorded as provided under Section 391 CrPC. Any material produced before the appellate court to fill in the gaps by either side cannot be considered by the appellate court; more so, to reverse the judgment of the trial court."

23. Similarly, it was held in ***H.N. Jagadeesh v. R. Rajeshwari*, *(2019) 16 SCC 730: (2020) 2 SCC (Cri) 450: (2020) 2 SCC (Civ) 758: 2017 SCC OnLine SC 1813***, that where the complainant had failed to produce the notice before the learned Trial Court, he could not be permitted to lead the evidence before the learned Appellate Court to prove it. It was observed at page 731:

> "6. We are unable to agree with this approach of the High Court, in the facts of this case, which is inappropriate in law. The service of the statutory notice calling upon the drawer of the cheque (after it has been disowned) to pay the amount of the cheque is a necessary precondition for filing the complaint under Section 138 of the Act. Therefore, it was incumbent upon the respondent to produce the said statutory notice on record to prove the same as well. In this case, this document was not even filed by the respondent along with the complaint, and the question of proving the same was, therefore, a far cry. In a case like this, we fail to understand how the aforesaid omission on the part of the respondent in not prosecuting the complaint properly could be ignored, and another chance could have been given to the respondent to prove the case by producing further evidence. It amounts to giving an opportunity to the respondent to fill up the lacuna."

24. It was laid down in ***Rajvinder Singh v. State of Haryana*, *(2016) 14 SCC 671: (2016) 4 SCC (Cri) 421: 2015 SCC OnLine SC 971***

that where it was possible to examine the Forensic Expert at the trial stage, an application to examine him at the appellate stage cannot be allowed. It was observed at page 677

> "12. At the outset, we must deal with submissions as regards the application for leading additional evidence at the appellate stage. It has been the consistent defence of the appellant that the dead body found in agricultural fields in District Muzaffarnagar was that of Pushpa Verma, and he went to the extent of producing a photograph of the dead body in the present trial. He also examined Brahm Pal Singh, Sub-Inspector and other witnesses. It was certainly possible to examine a forensic expert at the trial court stage itself, and the High Court was right and justified in rejecting the prayer to lead additional evidence at the appellate stage. Nonetheless, we have gone through the report of the said forensic expert engaged by the appellant. The exercise undertaken by that expert is to start with the admitted photograph of Pushpa Verma on a computer, then remove the "bindi" by some process on the computer, then by same process remove her spectacles and by computer imaging change the image as it would have looked if the lady was lying down in an injured condition. The computer image so changed was then compared with the photograph of the dead body. We have seen both the images, and we are not convinced at all about any element of similarity. We do not, therefore, see any reason to differ from the view taken by the High Court."

25. It was held in ***Ajitsinh Chehuji Rathod v. State of Gujarat*, *(2024) 4 SCC 453: 2024 SCC OnLine SC* 77**, that the power under Section 391 of Cr.P.C. can be exercised when the party was prevented from presenting the evidence despite the exercise of

due diligence or the facts giving rise to such prayer came to light during the pendency of the appeal. It was observed at page 455:

> "8. At the outset, we may note that the law is well-settled by a catena of judgments rendered by this Court that power to record additional evidence under Section 391CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non-recording of such evidence may lead to failure of justice."

26. In the present case, it was mentioned in para 7 of the application that the copy of the order could not be placed despite due diligence because the State was prosecuting the accused, and it failed to produce the order of the District Collector on record. This is no reason. The applicant was a complainant before the learned Trial Court. He had filed the complaint before the District Collector. His counsel represented him before the learned District Collector, and he was aware of the fact that the judgment was delivered by the learned District Collector. Therefore, he should have brought it to the notice of the learned Public Prosecutor that such a judgment was delivered, and he cannot take shelter behind the plea that the document was required to be produced by the State, which had failed to produce it.

27. Even otherwise, the document is not relevant. Sections 40 to 44 of the Indian Evidence Act deal with the admissibility of the judgments of the Court. Section 40 provides that a judgment, order or decree which prevents any Court from taking cognisance or holding a trial is relevant. It is not the case of the applicant that the judgment passed by the District Collector prevents the Court from taking cognisance or holding a trial. Thus, it does not fall within the purview of Section 40 of the Indian Evidence Act. Section 41 of the Indian Evidence Act deals with the judgments delivered by probate, matrimonial, admiralty or insolvency jurisdiction. District Collector does not fall within the definition of any of these Courts. Hence, the judgment is not admissible under Section 41 of the Indian Evidence Act. Section 42 of the Indian Evidence Act deals with judgments, orders or decrees if they relate to a matter of public nature relevant to the inquiry. The judgment of the District Collector does not deal with a matter of public nature, and the judgment is not admissible under Section 42 of the Indian Evidence Act. Section 43 provides that judgments, orders or decrees other than those mentioned in Sections 40, 41 and 42 are irrelevant unless the existence of such judgment, order or decree is a fact in issue or relevant fact in

some other provision of the Act. It was held in ***Jagdish Chandra Soni v. State of Rajasthan*, *1998 SCC OnLine Raj 316: (1998) 1 RLW 404: 1998 Cri LJ 1902: (1998) 1 RLR 214: (1998) 2 WLC 86*** that findings given in the departmental enquiry cannot be admitted in the judicial proceedings. It was observed:

> "**9.** The learned counsel for the petitioner had led much influence on the fact that in the departmental inquiry, the petitioner was exonerated of the charge and therefore, no prima facie case is made out. I am afraid the contention cannot be accepted as correct, because the findings given in the departmental inquiry do not appear to be relevant in view of the provisions contained in Sections 40 of 43 of the Evidence Act. Section 43 of the Evidence Act provides that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provisions of the Act. The findings given by the Inquiry Officer in the Departmental Inquiry are not relevant under Sections 40, 41, 42 or any other section of the Evidence Act. Therefore, there can be no escape from the conclusion that the findings given by the Inquiry Officer or the Disciplinary Authority in the departmental inquiry are irrelevant by virtue of the provisions contained in Section 43 of the Evidence Act.
>
> **10.** In ***State of Bihar v. Radha Krishna Singh, (1983) 3 SCC 118***, the Hon'ble Supreme Court considered the provisions of Sections 40 to 43 of the Evidence Act. At page 164 of the report, the Hon'ble Supreme Court observed: —
>
> > Taking the first head, it is well settled that judgments of courts are admissible in evidence under the provisions of Sections 40, 41 and 42 of the Evidence Act. Section 43, which is extracted below, clearly provides that those judgments which do not fall within the four corners of Sections 40 to 42 are inadmissible

unless the existence of such judgment, order or decree is itself a fact in issue or a relevant fact under some other provisions of the Evidence Act:

43. Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant-Judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act.

Some courts have used Section 13 to prove the admissibility of a judgment as coming under the provisions of Section 43, referred to above. We are, however, of the opinion that where there is a specific provision covering the admissibility of a document, it is not open to the court to call into aid other general provisions in order to make a particular document admissible. In other words, if a judgment is not admissible as not falling within the ambit of Sections 40 to 42, it must fulfil the conditions of Section 43; otherwise, it cannot be relevant under Section 13 of the Evidence Act. The words "other provisions of this Act" cannot cover Section 13 because this section does not deal with judgments at all.

It is also well settled that a judgment in rem, like judgments passed in probate, insolvency, matrimonial or guardianship or other similar proceedings, is admissible in all cases whether such judgments are inter partes or not. In the instant case, however, all the documents consisting of judgments filed are not judgments in rem and therefore, the question of their admissibility on that basis does not arise. As mentioned earlier, the judgments filed as Exhibits in the instant case are judgments in personam and, therefore, they do not fulfil the conditions mentioned in Section 41 of the Evidence Act."

11. The learned counsel for the petitioner has not been able to show under which provision of the Evidence Act the order passed by the disciplinary authority in the departmental inquiry conducted against the petitioner is

> relevant so far as the proceedings pending before the criminal court are concerned. I am therefore of the opinion that in view of the authoritative pronouncement of the Hon'ble Supreme Court in ***State of Bihar v. Radha Krishna Singh*** (supra), the findings given by the Inquiry Officer in the departmental inquiry should be held to be irrelevant. In other words, the findings given in the departmental inquiry cannot be used for the purpose of showing that no prima facie case is made out against the petitioner.

28. Thus, the judgment is irrelevant as per Section 43 of the Indian Evidence Act and cannot be taken on record.

29. Mr. R.L. Sood, learned Senior Counsel for the petitioner/informant, contended that the District Collector had recorded the findings that the sale deeds registered in favour of the accused Govinder Singh violate Section 118 of the Tenancy Act because forged agriculturist certificates were produced. This Court is also concerned with the production of the forged agriculturist certificates, and the findings recorded by the District Collector are highly relevant. This submission cannot be accepted. This Court has to independently determine the question whether the forged agriculturist certificates were produced and cannot abdicate its responsibility to the District Collector. Accepting this submission would obviate the necessity of the trial before the criminal Court. It was laid down by the Hon'ble Supreme Court in ***Kharkan v. State of U.P., 1963 SCC***

OnLine SC 90: (1964) 4 SCR 673: (1965) 2 SCJ 546: 1965 CRI LJ 116: AIR 1965 SC 83 that the earlier judgment cannot be used for interpreting the evidence in subsequent judgment. It was observed:

> "**11.** It was contended by Mr Tewatia that the earlier judgment involved almost the same evidence, and the reasoning of the learned Judge in *Paran's case* destroys the prosecution's case in the present appeal. He attempted to use the earlier judgment to establish this point. In our opinion, he cannot be allowed to rely upon the reasoning in the earlier judgment proceeding, as it did upon evidence which was separately recorded and separately considered. The eyewitnesses in this case are five in number, while in the other case, there were only two, but that apart, the earlier judgment can only be relevant if it fulfils the conditions laid down by the Indian Evidence Act in Sections 40-43. The earlier judgment is no doubt admissible to show the parties and the decision, but it is not admissible for the purpose of relying upon the appreciation of evidence. Since the bar under Section 403 Criminal Procedure Code did not operate, the earlier judgment is not relevant for the interpretation of evidence in the present case."

30. Therefore, the judgment is not relevant and cannot be used for holding that forged agriculturist certificates were produced with the sale deeds. Consequently, the present application is dismissed.

31. The petitioner/informant has prayed in the present revision that the accused be convicted. It is not permissible. Section 401(3) specifically provides that the High Court is not

authorised to convert the findings of acquittal into a conviction. It was laid down by the Hon'ble Supreme Court in ***Mahabir v. State of Haryana, 2025 SCC OnLine SC 184,*** that it is impermissible for the High Court to convert the acquittal into a conviction. It was observed: -

> "**39.** This Court in ***Bindeshwari Prasad Singh v. State of Bihar (now Jharkhand) reported in (2002) 6 SCC 650***, laid down that there is a limit on the powers of the High Court as a Revisional Court, prohibiting it from converting a finding of acquittal into one of conviction. Para 12 reads thus: —
>
> > "**12.** We have carefully considered the material on record, and we are satisfied that the High Court was not justified in reappreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an

order of acquittal merely because the trial court has taken a wrong view of the law or has erred in the appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. *(See* ***D. Stephens v. Nosibolla [1951 SCC 184: 1951 SCC 184: AIR 1951 SC 196: 1951 Cri LJ 510], K. Chinnaswamy Reddy v. State of A.P. [AIR 1962 SC 1788 : (1963) 1 Cri LJ 8], Akalu Ahir v. Ramdeo Ram [(1973) 2 SCC 583: 1973 SCC (Cri) 903], Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu [(1975) 4 SCC 477: 1975 SCC (Cri) 543: AIR 1975 SC 1854]*** *and* ***Mahendra Pratap Singh v. Sarju Singh [AIR 1968 SC 707: 1968 Cri LJ 665].)"***

40. This Court in ***Joseph Stephen v. Santhanasamy reported in (2022) 13 SCC 115***, laid down that on a plain reading of sub-section (3) of Section 401 CrPC, it has to be held that sub-section (3) of Section 401 CrPC prohibits/bars the High Court to convert a finding of acquittal into one of conviction. Para 10 reads thus: —

"**10.** Applying the law laid down by this Court in the aforesaid decisions and on a plain reading of sub-section (3) of Section 401 CrPC, it has to be held that sub-section (3) of Section 401 CrPC prohibits/bars the High Court to convert a finding of acquittal into one of conviction. Though and as observed hereinabove, the High Court has revisional power to examine whether there is manifest error of law or procedure, etc. however, after giving its own findings on the findings recorded by the court acquitting the accused and after setting aside the order of acquittal, the High Court has to remit the matter to the trial court and/or the first appellate court, as the case may be."

41. This Court in ***Joseph Stephen*** (supra) holds that first, the High Court has to pass a judicial order to treat an

application for revision as a petition of appeal. The High Court has to pass a judicial order because sub-section (5) of Section 401 CrPC provides that if the High Court is satisfied that such revision application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do. While treating the application for revision and to deal with the same as a petition of appeal, the High Court has to record the satisfaction as provided under sub-section (5) of Section 401 CrPC. Para 14 reads thus: —

> "**14.** Now so far as the power to be exercised by the High Court under sub-section (5) of Section 401 CrPC, namely, the High Court may treat the application for revision as petition of appeal and deal with the same accordingly is concerned, firstly the High Court has to pass a judicial order to treat the application for revision as petition of appeal. The High Court has to pass a judicial order because sub-section (5) of Section 401 CrPC provides that if the High Court is satisfied that such revision application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do. While treating the application for revision as a petition of appeal and dealing with the same accordingly, the High Court has to record the satisfaction as provided under sub-section (5) of Section 401 CrPC. Therefore, where under the CrPC an appeal lies, but an application for revision has been made to the High Court by any person, the High Court has jurisdiction to treat the application for revision as a petition of appeal and deal with the same accordingly as per sub-section (5) of Section 401 CrPC, however, subject to the High Court being satisfied that such an application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do and for that purpose the High Court has to pass a judicial order, may be a formal order, to treat the application for revision as a petition of appeal and deal with the same accordingly."

42. This Court in ***Ganesha v. Sharanappa reported in (2014) 1 SCC 87***, in para 11, clarifies that:

> "... Interference with the order of acquittal is called for only in exceptional cases - where there is manifest error of law of procedure resulting into miscarriage of justice, and, where the acquittal has been caused by shutting out evidence which otherwise ought to have been considered or where material evidence which clinches the issue has been overlooked. In such exceptional cases, the High Court can set aside an order of acquittal, but it cannot convert it into one of conviction. The only course left to the High Court in such exceptional cases is to order a retrial".

43. This Court in ***Santhakumari v. State of Tamil Nadu reported in (2023) 15 SCC 440***, laid down that the order passed by the High Court is in the teeth of the provisions of sub-section (2) of Section 401 of the CrPC as interpreted by this Court in ***Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel reported in (2012) 10 SCC 517***. Paras 5 and 6 respectively read thus: —

> "**5.** Having considered the submissions, since it is not in dispute that the proposed accused were not served notice of the revision proceedings, the order passed by the High Court is in the teeth of the provisions of sub-section (2) of Section 401 of the Code as interpreted by this Court in ***Manharibhai Muljibhai Kakadia [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517: (2013) 1 SCC (Cri) 218].***
>
> ***6.*** *The decision in* ***Manharibhai Muljibhai Kakadia [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218]*** has also been followed in ***Bal Manohar Jalan v. Sunil Paswan [Bal Manohar Jalan v. Sunil Paswan, (2014) 9 SCC 640 : (2014) 5 SCC (Cri) 256],*** wherein it was held: (***Bal Manohar Jalan case [Bal Manohar Jalan v. Sunil Paswan, (2014) 9 SCC 640 : (2014) 5 SCC (Cri) 256], SCC p. 644, para 9***)

> "9. In the present case challenge is laid to the order dated 4-3-2009 at the instance of the complainant in the revision petition before the High Court and by virtue of Section 401(2) of the Code, the accused mentioned in the first information report get the right of hearing before the Revisional Court although the impugned order [Sunil Paswan v. State of Bihar, 2011 SCC OnLine Pat 600] therein was passed without their participation. The appellant who is an accused person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code and on this ground, the impugned order [***Sunil Paswan v. State of Bihar, 2011 SCC OnLine Pat 600***] of the High Court is liable to be set aside and the matter has to be remitted.""

44. The decision in ***Manharibhai Muljibhai*** (supra) was referred to and relied upon in ***Bal Manohar Jalan v. Sunil Paswan reported in (2014) 9 SCC 640***, wherein it was *inter alia*, held that

> "The appellant, who is an accused person, cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code and on this ground, the impugned order of the High Court is liable to be set aside...".

45. This Court in ***Nandini Satpathy v. P.L. Dani reported in (1978) 2 SCC 424*** held that the right to consult an advocate of choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied such a right. The spirit and ethos of Article 22(1) is that it is fundamental to the rule of law that the service of a lawyer shall be available for consultation to the accused person under circumstances of near-custodial interrogation. Moreover, the right against self-incrimination is best practised & best promoted by conceding to the accused the right to consult a legal practitioner of his choice. Lawyers' presence is a constitutional claim in some circumstances of our country, and in the context of Article 20(3), is an

> assurance of awareness and observance of the right to silence.
>
> **46.** Thus, it is as clear as a noonday that the High Court committed an egregious error in reversing the acquittal and passing an order of conviction in exercise of its revisional jurisdiction and that too without affording any opportunity of hearing to the appellants herein.

32. Therefore, it is impermissible to convert the acquittal into a conviction while hearing a revision at the instance of a private party.

33. 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 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.

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

16. This Court in the aforesaid judgment in *Amit Kapoor case* [***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***] has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228CrPC is sought for as under : (***Amit Kapoor case [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***], SCC pp. 482-83, para 27)

"27. Having discussed the scope of jurisdiction under these two provisions, i.e. Section 397 and Section 482 of the Code, and the fine line of jurisdictional distinction, it will now be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but inherently impossible to state such principles with precision. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of

jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion, and where the basic ingredients of a criminal offence are not satisfied, then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

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27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

***

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected

> to marshal the records with a view to decide admissibility and reliability of the documents or records, but is an opinion formed prima facie."

> **17.** The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistencies in the statement of witnesses, and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge.

35. 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 on page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the ground 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 reappreciate the evidence and come to its conclusion on the same when the evidence has

already been appreciated by the Magistrate as well as the Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [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 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.

36. 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."

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

38. The learned Trial Court framed a charge against the accused Govinder Singh that he had cheated Manohar Lal on 10.4.2008 and 24.6.2008 at Suni by dishonestly inducing him to

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transfer his land and thereby committed an offence punishable under Section 420 of IPC. This was a charge faced by the accused Govinder Singh, and the learned Trial Court was supposed to record a finding regarding this charge, and if the learned Trial Court held that the cheating of Govinder Singh was not proved, it could not be faulted.

39. It was submitted that the learned Trial Court misunderstood the case of the prosecution because the prosecution never alleged that Manohar Lal was cheated, but it was asserted that the State was cheated. It is impermissible to raise this argument before this Court. The remedy of the petitioner was to apply for the modification of the charge. Once the accused was never told that he had to face a charge of cheating the State, he cannot be held to be liable for cheating the State by holding that an error was committed by the learned Trial Court while framing the charge.

40. Even otherwise, the case that accused Govinder Singh had cheated the State by producing forged agriculturist certificates was not proved.

41. Shyam Sunder (PW27) conducted the investigation. He stated in his cross-examination that he had obtained the

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certified copies of sale deeds (Ex.PW11/B and Ex.PW11/C); however, no agriculturist certificate was attached to them, nor was it supplied to him with the sale deed. His statement that the agriculturist certificates were not attached to the sale deed will make the prosecution's case highly suspect that the agriculturist certificates were attached to the sale deed at the time of their presentation.

42. This inference is supported by the statements of the persons present at the time of the execution of the sale deed. Manohar Lal (PW6) specifically stated in his cross-examination that no agriculturist certificate was produced with the sale deed. Sub Registrar made an inquiry from Govinder Singh, and Govinder Singh produced the documents of his property known as Knollswood. Sub Registrar satisfied himself and registered the sale deed. He was permitted to be re-examined by the learned APP. He stated that he had not told the police about the property papers of Knollswood. He clarified in the cross-examination by the learned counsel for the defence that he had not told the police about these facts because no inquiry was made from him.

43. Bhoom Prakash (PW12) is a witness to the sale deed (Ex.PW11/B and Ex.PW11/C). He stated in his cross-examination

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that the agriculturist certificates were not attached to the sale deed at the time of their presentation. He was re-examined by learned APP and he stated that he had not seen the agriculturist certificate (Mark-A and Ex.PW11/A) attached to the sale deed, but had seen the other papers. He had told the police about this fact. He clarified in the cross-examination by the defence that the Tehsildar made inquiries from Govinder Singh regarding his agricultural land, and he replied that he owned the land in Shimla city and the sale deed was registered.

44. Diwan Singh (PW13) identified Manohar Lal in the Sale Deed (Ex.PW11/B and Ex.PW11/C). He stated in his cross-examination that Sub Registrar made an inquiry from Govinder Singh, and he showed the documents of his property located at Knollswood and the sale deeds were registered. He could not say whether the agricultural certificates (Mark-A and Ex.PW1/A) were attached to the sale deed. He was permitted to be re-examined, and he denied that no inquiry was made regarding the property located at Knollswood.

45. Bal Krishan (PW23) stated that he had signed the sale deeds (Ex.PW11/B and Ex.PW11/C). He stated in his cross-examination that the agriculturist status was asked from

Govinder Singh, who showed papers of the Knollswood property to the Tehsildar. Tehsildar satisfied himself and registered the sale deed. He did not see the agriculturist certificate with the sale deed.

46. All these witnesses were not declared hostile by the prosecution. They were projected as witnesses of truth by the prosecution. Therefore, their testimonies categorically proved that the agriculturist certificates were not annexed to the sale deeds. It was laid down by the Hon'ble Supreme Court in ***Raghunath v. State of Haryana, (2003) 1 SCC 398: 2003 SCC (Cri) 326: 2002 SCC OnLine SC 1061*** that when two views are possible, the one in favour of the accused is to be accepted. It was observed at page 413:

> **33.** In the facts and circumstances recited above, we are clearly of the view that the prosecution has not come up with the true story. It has suppressed the facts. If that be the case, the whole prosecution story would stand on quicksand. The prosecution has failed to establish its case beyond a reasonable doubt. It is now a well-settled principle of law that if two views are possible, the one in favour of the accused and the other adversely against it, the view favouring the accused must be accepted.

47. Thus, learned Courts below did not err in accepting this version and holding that the agriculture certificates were not attached to the sale deeds.

48. Heavy reliance was placed upon the statements of the Sub Registrars, Padam Singh (PW7) and Maan Singh (PW9), to submit that they categorically stated about the production of the agriculturist certificates. Padam Singh stated that Jamabandi, valuation and agriculture certificates were produced by the purchaser. Similarly, Maan Singh stated that Jamabandi, Average and Tatima and agricultural certificates were produced by Govinder Singh. However, these statements in the examination-in-chief have been diluted in their cross-examination and the documents on record.

49. Padam Singh (PW7) stated in his cross-examination that the Sub Registrar can satisfy himself by looking into any document to find out whether the purchaser is an agriculturist or not, and there is no legal requirement to produce the agriculturist certificate. He did not remember that the purchaser had shown the documents of Knollswood. He stated that three documents were mentioned to have been annexed to the sale deed, which are a copy of the Jamabandi, Average cost and Tatima. He volunteered to say that this detail was not prepared at that time, but after his retirement. He admitted that the sale deed

cannot be registered without average cost, Jamabandi and Tatima.

50. The admission in the cross-examination that three documents are shown to have been annexed to the sale deed, namely Jamabandi, average cost and Tatima, makes his statement in the examination in chief doubtful that an agriculturist certificate was also annexed to the sale deed. His statement regarding the production of agriculturist certificate is also not supported by the other witnesses present at the time of the execution of the sale deed. Thus, no reliance can be placed on his testimony.

51. Maan Singh (PW9) admitted in his cross-examination that he came to know about the documents annexed to the sale deed when the police came to make inquiries from him. The police showed the documents to him, and he stated that the agriculturist certificate (Mark-A) was produced before him. He did not remember it personally. He did not remember that the documents of Knollswood were shown to him. He admitted that he had registered the sale deed after satisfying himself about the property located at Knollswood.

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52. The statement of this witness shows that he did not remember the details of the documents, and he made the statement after seeing the documents brought by the police, which means that he was making the statement based on the documents shown to him by the police and not the personal knowledge. Hence, his testimony cannot be relied upon to hold that the agriculturist certificates were annexed to the sale deed. His statement that he had satisfied himself after looking at the documents annexed to the sale deed makes it doubtful that the agriculturist certificate was annexed to the sale deed because, had the agriculturist certificate been annexed to the sale deed, there was no necessity to look into the documents of Knollswood.

53. Thus, the witnesses have consistently stated that the documents of the Knollswood property were shown by the accused, Govinder Singh, and the sale deed was registered thereafter. These witnesses were not cross-examined by the prosecution and were not declared hostile. Therefore, their testimonies are binding upon the prosecution, and the prosecution's case that agriculturist certificates were produced by the accused is doubtful.

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54. Mr. R.L. Sood, learned Senior Counsel for the petitioner/informant, relied upon the definition of agriculturist, land owner and Section 118 to submit that only a person who cultivates the land personally is an agriculturist. No evidence was presented to show that the accused, Govinder Singh, was cultivating the land personally. Hence, the version that the Sub Registrar had satisfied himself with the property located at Knollswood is not acceptable. Further, the Sub Registrar could not have satisfied himself by merely looking at the document, and he has to retain the proof of the purchaser being an agriculturist on record. The documents of the Knollswood were not retained on record, and the version that the Sub registrar had satisfied himself by looking into the property papers is not acceptable. It was not permissible for the Sub Registrar to look into the sale deed in favour of the father of the accused. He had partitioned the property on 24.3.1982 vide Memorandum of Oral Partition (Ex.DP). Hence, the accused Govinder ceased to be an agriculturist after the partition. These submissions will not help the petitioner. This Court is not to interpret the provisions of the Tenancy Act or to determine the validity of the registration of the sale deeds, but to see whether the prosecution's case regarding

the production of the forged Agriculturist Certificate before the Sub Registrar was proved or not. The evidence on record does not show that the certificates were produced.

55. It was submitted that the wrong address was given in the sale deed by describing the accused as a resident of Kupvi. This submission will not help the petitioner. There is a distinction between a false document and a document whose recitals are false (Please see ***Mohammad Ibrahim Vs State of Bihar (2009) 8 SCC 851)***. There is no evidence that the sale deed would not have been registered had the correct address been provided, and the furnishing of the wrong address would not constitute cheating.

56. The evidence against the accused, Kahan Singh, is that accused Govinder Singh disclosed to the police during interrogation that he had contacted Rajinder Maheshwari. Rajinder Maheshwari said that he had talked to Kahan Chand, and Kahan Chand got the agriculturist certificates prepared from Mast Ram. Thus, the prosecution is relying upon the statement made by the co-accused Govinder Singh and the statement made by the accused Kahan Chand and Rajinder Maheshwari, who is not before the Court. The statement made by the co-accused to

the police during the investigation is inadmissible, as it is hit by Section 162 of Cr.P.C. It was laid down by the Hon'ble Supreme Court in ***Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547: (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588*** that a statement made by co-accused during the investigation is hit by Section 162 of Cr.P.C. and cannot be used as a piece of evidence. It was also held that the confession made by the accused is inadmissible because of Section 25 of the Indian Evidence Act. It was observed at page 568:-

> "**44.** Such a person, viz., the person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned, and the statement is taken by the police officer. A confession that is made to a police officer would be inadmissible, having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act, would also be inadmissible. A confession, unless it fulfils the test laid down in ***Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66: AIR 1939 PC 47]*** and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC."

57. Therefore, it is impermissible to rely upon the statement of the Investigating Officer regarding what was told to him during the investigation, and there is no legally admissible

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evidence against accused Kahan Chand. Thus, the learned Trial Court had rightly acquitted him.

58. Therefore, learned Courts below had taken a reasonable view based on the evidence placed on record, and it is impermissible to interfere with such a view while exercising the revisional jurisdiction.

59. No other point was urged.

60. In view of the above, the present revision fails, and the same is dismissed.

61. Records be sent back forthwith along with a copy of the judgment. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

8th July, 2025
(Chander)