

THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Revisional Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl. Rev. P. No. 02 of 2025

1. Bidhan Trikhatri,
Aged about 29 years,
Son of Bimal Trikhatri,
Resident of Upper Syari,
Gangtok, Sikkim,
Pin No. 737102.

2. Bikash Trikhatri,
Aged about 25 years,
Son of Bimal Trikhatri,
Resident of Upper Syari,
Gangtok, Sikkim,
Pin No. 737102.

*(Presently both of them are in Rongyek Central
Jail, Rongyek, Sikkim).*

..... Revisionists

Versus

State of Sikkim.

.....Respondent

**Application under Section 438 and 442 of the Bharatiya
Nagarik Suraksha Sanhita, 2023.**

*(Revision against the Impugned Judgment dated 12.12.2024
passed by the learned Sessions Judge, Gangtok, Sikkim in
Criminal Appeal No. 17 of 2024 titled Bidhan Trikhatri & Ors. vs.
State of Sikkim, dismissing the appeal of the petitioners herein).*

Appearance:

Mr. Kazi Sangay Thupden, Advocate for the
Revisionists.

Mr. Yadev Sharma, Additional Public Prosecutor for
the Respondent.

Date of Hearing : 13.03.2026
Date of Judgment : 23.03.2026
Date on which uploaded : 23.03.2026

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The present revision petition seeks to challenge the impugned judgment dated 12.12.2024 passed by the learned Sessions Judge, Gangtok in Criminal Appeal No. 17 of 2024 (Bidhan Trikhatri & Ors. vs. State of Sikkim) dismissing the appeal of the revisionists.

2. Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) which is in *pari materia* to section 397 of the Code of Criminal Procedure, 1973 (Cr.P.C.) contemplates the power of revision solely for the purpose of satisfying 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*.” Therefore, the ambit and scope of the power of revision is not only clear from the provision itself but well explained in numerous judgments rendered by the constitutional courts. One such judgment as cited by Mr. Kazi Sangay Thupden, learned counsel for the revisionists is taken into consideration.

3. In ***Kishan Rao vs Shankargouda***¹ the Supreme Court considered two of its previous judgments which examined

¹ (2018) 8 SCC 165

the scope of section 397/401 Cr.P.C. and the ground for exercising the revisional jurisdiction by the High Court. In ***State of Kerala vs. Puttumana Illathjathavedan Namboodiri***² the Supreme Court held that the jurisdiction is one of supervisory jurisdiction exercised for correcting miscarriage of justice. However, the revisional powers 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 Courts to re-appreciate the evidence and come to its own conclusion on the same when the evidence had 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 gross miscarriage of justice.”

4. In ***Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke***³ the Supreme Court held that 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

² (1999) 2 SCC 452

³ (2015) 3 SCC 123

possible. Unless the finding of the court 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, courts may not interfere with decision in exercise of their revisional jurisdiction.

5. Keeping in mind the well settled principles of law for the exercise of revisional jurisdiction let us now proceed to examine the present revision petition.

6. The learned Chief Judicial Magistrate convicted the revisionists for the offence under section 380/454 of the Indian Penal Code, 1860 (IPC) by judgment dated 23.08.2022. The learned Sessions Judge dismissed the appeal of the revisionists by a judgment dated 12.12.2024. The judgment of the learned Chief Judicial Magistrate finding the revisionists guilty of the offences under section 380 and 454 of the IPC was upheld. However, the learned Sessions Judge was of the view that the revisionists were also liable to be convicted under section 34 of the IPC.

7. Two concurrent findings of guilt under section 380 and 454 of the IPC is now once again sought to be

challenged before this Court invoking the revisional jurisdiction.

8. The revisionists complain that during investigation several items were seized on 28.11.2021 from a flat at Bagdogra that are claimed to be the stolen items. These seizures according to the revisionists were effected in the presence of two witnesses who were residents of Nam Nang and not of the surrounding locality of Bagdogra where the items were seized. The revisionists question as to why no independent witnesses of the locality i.e. Bagdogra were used.

9. The property seizure memos (exhibit-11 and 12) were both effected under section 102 of the Cr.P.C. which does not mandate the requirement of any witnesses. The property seizure memo (exhibit-11) relates to seizure made on 24.11.2021 at the place of occurrence i.e. Nam Nang, Gangtok. The property seizure memo (exhibit-12) relates to seizure made at Bagdogra on 26.11.2021 from the room of revisionist no.1 and another acquitted by the Sessions Judge. The submission of the learned counsel for the revisionists on the requirement of independent persons of the locality perhaps stems from section 100 Cr.P.C. which was not invoked by the Investigating Officer-(I.O.). In any

case, the learned counsel for the revisionists has not been able to point out any prejudice caused.

10. In *State of Haryana vs. Rajmal & Anr.*⁴ the Supreme Court was examining the scope of revision under section 401 and 397 of the Cr.P.C.. It was contended therein that the seizures were made without any independent witnesses from the locality at the time of conducting the raid. The High Court agreed and interfered in its revisional jurisdiction. The Supreme Court referred to its three Judge Bench judgment in *Radha Kishan vs. State of U.P.*⁵ in which it was held that an illegal search does not vitiate the seizure of the article. The only requirement of law in such cases is that the court has to examine carefully the evidence regarding the seizure but beyond this no further consequences ensue. The Supreme Court then went on to find that this principle is being consistently followed by it and by different High Courts since then. It was held if that principle is followed no error could be discerned from the courts below proceeding on the materials collected, as a result of the seizure of materials.

11. In *State of Punjab vs. Baldev Singh*⁶ the Constitutional bench of the Supreme Court was examining a case under

⁴ (2011) 14 SCC 326

⁵ (AIR) 1963 SC 822

⁶ (1999) 6 SCC 172

the Narcotic Drugs and Psychotropic Substances Act, 1985. The Supreme Court referred to its judgment in ***State of Punjab vs. Balbir Singh***⁷ where it was opined that failure to comply with the provisions of the Cr.P.C. in respect of search and seizure and particularly those of section 100, 102, 103 and 165 per se does not vitiate the prosecution case.

12. This ground therefore, does not permit the revision court to interfere with concurrent findings of the trial court as well as the appellate court.

13. The learned counsel for the revisionists also submitted that there is no evidence to establish that the ten digit specimen fingerprints were in fact of the revisionists as there is no record that they were taken by the I.O. As such, the conviction, which is based solely on the investigation of the chance fingerprints obtained from the place of occurrence, cannot be sustained. Although this issue was not raised either before the court of the learned Chief Judicial Magistrate or before the learned Sessions Judge, this Court shall examine the records for the sole purpose of satisfying itself that the revisionists were not prejudiced during the trial.

⁷ (1994)3 SCC 299

14. The record reveals that the chance fingerprints obtained from the place of occurrence by Police Inspector-Tensung Bhutia (P.W.2) were exhibited as exhibits 'X', 'Y' and 'Z' by him. He deposed that he had lifted the chance fingerprints from the place of occurrence. The I.O. confirmed this fact. The ten digit specimen fingerprints of the revisionists have been exhibited as exhibits 'A' and 'B' and are available in the records of the case. The I.O. exhibited the requisition he made to the Superintendent of Police for comparison of the chance fingerprints developed from the Godrej Almirah from the place of occurrence with the ten digit specimen fingerprints of the suspects including the revisionists marked at exhibits 'A', 'B' and 'C'. The fingerprint expert-Police Inspector-Tensung Bhutia (P.W.2) in his expert opinion (exhibit-8) confirmed having received both the developed and lifted chance fingerprints from the place of occurrence as exhibits 'X', 'Y' and 'Z' as well as the ten digits specimen fingerprints of the three suspects including the revisionists as exhibits 'A', 'B' and 'C'. He thereafter forwarded his opinion (exhibit-8) to the Station House Officer vide communication dated 23.12.2021 (exhibit-9).

15. The I.O. and the fingerprint expert-Police Inspector-Tensung Bhutia (P.W.2) have given detailed narratives of

the process of developing of the chance fingerprints and sequence of events that followed thereafter. The only cross examination with regard to this is the suggestion that the I.O. had not obtained any permission from the Court while lifting the fingerprints of the three accused while they were in police custody. There is not even a suggestion during the cross-examination that the fingerprint exhibits 'A', 'B' and 'C' were not of the revisionists or that they were not taken from the revisionists.

16. The fingerprint expert opinion (exhibit-8) concluded that the developed and lifted chance fingerprints matched with the specimen fingerprints of all the three suspects including the revisionists.

17. The defence was unable to demolish the evidence of Tensung Bhutia (P.W.2) during cross-examination. In fact, there is not even a suggestion that the fingerprint expert opinion falsely mentioned about having received and examined the developed and lifted chance fingerprints and the ten digit specimen fingerprints of the three suspects including the two revisionists. Therefore, this Court finds no reason to doubt the I.O. and the fingerprint expert's opinion.

18. None of the issues raised by the learned counsel for the revisionists permits this Court to interfere the concurrent findings of the learned Chief Judicial Magistrate and the learned Sessions Judge convicting and upholding the conviction of the revisionists for the crimes they had committed.

19. As a final plea the learned counsel for the revisionists prayed that the Court should view the sentence leniently considering that the father of the revisionists was aged and that they were not financially stable. The learned counsel could not show any material to establish his submission from the records of the case. The learned Chief Judicial Magistrate has sentenced the revisionists for a term of five years along with a fine of Rs.20,000/- each for the offence under section 454 of the IPC. In default of payment of fine they were to undergo a simple imprisonment for further six months. For the offence under section 380 of the IPC the revisionists were sentenced to undergo simple imprisonment for a term of three years along with a fine of Rs.10,000/- each. In default of fine, the convicts were to undergo simple imprisonment for three months.

20. The conviction and sentence of the revisionists under section 454 IPC is for lurking house trespass or house breaking in order to commit offence punishable with

imprisonment with the intention of committing theft. The theft has been adequately proved. The theft is of large sum of money, gold jewellery and other valuable articles. The sentence imposed could have been for imprisonment extending to ten years. The learned Chief Judicial Magistrate has sentenced the revisionists for a period of five years only.

21. For the offence under section 380 IPC i.e. theft in a dwelling house the punishment prescribed is imprisonment for a term which may extend to seven years. The learned Chief Judicial Magistrate has sentenced the revisionists for only three years.

22. The purpose of punishment is also proportionate response to wrongdoing. Retribution and deterrence are equally vital considerations. As the revisionists have already served the substantial part of their sentences this Court is not inclined to interfere with the proportionate sentences awarded.

23. Accordingly, the criminal revision petition is rejected and dismissed.

24. Let a copy of this judgment be transmitted forthwith to the Court of the learned Sessions Judge, Gangtok and to the Court of the learned Chief Judicial Magistrate, East Sikkim at Gangtok forthwith. The records of the Court below be remitted accordingly.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**
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