IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 41 of 2015

Reserved on: 9.12.2025

Date of Decision: 1.1.2026.

Pyar Singh Kanwar ...Petitioner

Versus

State of HP ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***No.***

For the Petitioner : Ms Sheetal Vyas, Advocate.

For the Respondent/State : Mr Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 5.12.2014, passed by learned Additional Sessions Judge-II, Shimla, District Shimla (learned Appellate Court), vide which the judgment of conviction dated 22.12.2009 and order of sentence dated 23.12.2009, passed by learned Judicial Magistrate First Class, Court No. 5, Shimla, District Shimla (learned Trial Court) were upheld. *(Parties shall hereinafter be referred to in the*

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

same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present petition are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 336 and 427 of the Indian Penal Code (IPC). It was asserted that the informant, Ganga Ram (PW3), had constructed two storeys of RCC and had laid eight pillars for the third floor. He had rented three rooms to Babli Thakur, who was running a shop for tyre puncture and a hotel. Accused Piar Singh started raising construction on his four biswas of land. He constructed eight pillars. He employed an excavator on 11.5.2005 for cutting the hill. The excavator caused damage to the informant's house. Accused Piar Singh told the informant about the damage on 12.5.2005. The informant went to the spot and found that the wall had collapsed. The informant told Krishan Lal (PW4) and Prem Chand (PW8) about the damage caused to his house. The accused assured to compensate the informant, but he failed to honour his promise. Babli Thakur had also removed his articles after the damage. The excavator employed by the accused also caused damage to the houses of

Gopal Dutt Gupta (PW5) and Kishori Lal Gupta (PW1). The matter was reported to the police. The police recorded the informant's statement (Ex.PW3/A) and sent it to the Police Station, where FIR (Ex.PW7/A) was registered. HC Padam Dev (PW7) investigated the matter. He visited the spot and prepared the site plan (Ex.PW7/C). He took the photographs (Ex. P1 to Ex. P14), whose negatives (Ex. P15 to Ex. P28). He filed an application (Ex.PW7/B) for obtaining Tatima and Jamabandi. Nand Lal (PW2) issued Tatima (Ex. PW2/A) and Jamabandi (Ex. PW2/B). HC Padam Dev filed an application (Ex.PW7/E) for seeking the expert opinion. Surinder Sharma (PW6) visited the spot and prepared a report (Ex.PW6/A), which was forwarded to the police vide memo (Ex.PW6/B). The statements of witnesses were recorded as per their version, and after the completion of the investigation, a challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of offences punishable under Sections 427 and 336 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined eight witnesses to prove its case. Kishori Lal (PW1) is the informant. Nand Lal (PW2) issued the Tatima and Jamabandi. Ganga Ram (PW3) and Gopal Dutt (PW5) are the owners of the building located in the vicinity. Krishan Lal (PW4) and Prem Chand (PW8) were told about the incident. Surinder Sharma (PW6) issued an expert opinion. HC Padam Dev (PW7) investigated the matter.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case regarding digging and consequent loss. He stated that he had not carried out any excavation. The excavator was employed by Ganga Ram. His land and the land of Ganga Ram are located adjacent to each other, and they are not on the higher and lower plains. He stated that he wanted to lead defence evidence, but did not produce any evidence.

6. Learned Trial Court held that the defence of the accused was contradictory. The strata of land on the spot were loose, and the accused was required to take necessary steps to prevent the landslide. The witnesses consistently stated that the landslide had occurred due to the excavation carried out by the

excavator employed by the accused. The report of the expert showed the extent of damage. Therefore, the accused was convicted of the commission of offences punishable under Sections 336 and 427 of the IPC and was sentenced as follows: -

Under Section 336 of IPC	To suffer simple imprisonment for 15 days.
Under Section 427 of IPC	To suffer simple imprisonment for 15 days, and pay a fine of ₹500/-.
Both the substantive sentences of imprisonment were ordered to run concurrently.	

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-II, Shimla (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had employed an excavator to carry out the excavation, which led to the collapse of the informant's house. The accused acted negligently by carrying out the excavation work. Learned Trial Court had rightly convicted the accused. The sentence imposed by the learned Trial Court was adequate, and no interference was required with it. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that the learned Courts below erred in appreciating the material placed on record. The accused had no intention to cause harm to any person. He was raising the construction of his house on the land owned by him. Surinder Sharma (PW6) specifically admitted that there was no possibility of any damage to the informant's house by the excavation carried out by the accused. He was an engineer, and his statement was wrongly ignored by the learned Courts below. The informant was directed by the Court to construct a retaining wall to prevent damage to his house and the land of others, but he failed to do so, which led to damage to the house. The police did not join any independent witnesses residing in the vicinity. No person deposed that strata of the land were loose, which were destabilised by the excavation. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Ms Sheetal Vyas, learned counsel for the petitioner/accused, and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

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10. Ms Sheetal Vyas, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. The statement of Surinder Sharma (PW6) proved that any excavation done by the accused could not have caused damage to the informant's property because the land of the accused and the informant are located adjacent to each other and not on different levels. The offences punishable under Sections 427 and 337 of the IPC require different mens rea and cannot be committed in the course of the same transaction. Therefore, she prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set-aside. She relied upon the judgment of this Court in ***Sudarshana Devi Vs. State of HP, Cr.MMO No. 201 of 2022, decided on 4.9.2024*** in support of her submission.

11. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the learned Appellate Court had properly appreciated the evidence on record, and this Court should not interfere with the concurrent findings of fact recorded by the learned Courts below. Therefore, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that 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 that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 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 397 CrPC, 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.
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> **15.**It would be apposite to refer to the judgment of this Court in ***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)
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> > "*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.
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> *13.* Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC."

15. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165:** *(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651* that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, *(1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)
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> > *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, (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."

16. This position was reiterated in ***Bir Singh v. Mukesh Kumar*, *(2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

> "**16.** It is well settled that in 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.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

17. This position was reiterated in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069,*** wherein it was observed:

> "**27.** It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perver-

> sity, upset concurrent factual findings [See: ***Bir Singh*** (supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> **28.** Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

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

19. Learned Trial Court convicted the accused for the commission of offences punishable under Section 336 and 427 of the IPC. Section 336 of the IPC requires negligence or rashness, whereas Section 427 of the IPC, read with Section 425, requires intent to cause wrongful loss or damage. The state of negligence and deliberate intent cannot exist simultaneously. Therefore, it was not possible to convict the accused for doing an act negligently as well as deliberately.

20. The terms rashness or negligence were explained by the Hon'ble Supreme Court in ***Mahadev Prasad Kaushik v. State of***

U.P.*, *(2008) 14 SCC 479: (2009) 2 SCC (Cri) 834: 2008 SCC OnLine SC 1551, at page 487: -

> **26.** Though the term "negligence" has not been defined in the Code, it may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a reasonable and prudent man would not do.
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> **25.** In ***Empress of India v. Idu Beg [ILR (1881) 3 All 776]*** Straight, J. made the following pertinent observations which have been quoted with approval by various courts, including this Court: (ILR p. 780)
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> > "... criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted."

21. The informant, Kishori Lal, stated that the accused employed an excavator, which caused extensive damage to his land and the house. The damage was also caused to the house of Ganga Ram. Cracks developed in three storeyed house of Gopal Dutt.

22. This witness has not stated that the accused had encroached upon his land. His simple case is that the accused carried out the excavation, which caused damage to his house. Bombay High Court held in ***Rasiklal Manilal Bhatt v. Savailal Hargovindas Sur, 1954 SCC OnLine Bom 108: AIR 1955 Bom 285*** that the land in an unburdened state is entitled to a natural right of support, but the land in a burdened state requires the acquisition of the right of support by easement. It was observed at page 286:

> "**6.** The Explanation to ill (e) under S. 7(b), Indian Easements Act is relevant on this point. This Explanation shows that land is in its natural condition when it is not excavated and not subjected to artificial pressure, and that the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition. In other words, the effect of the illustration read in the light of the Explanation is that the right which is referred to in S. 7(b) is applicable only to the land in its unburdened and natural state; it is not applicable to the structure built on the land. That is not to say that a similar right cannot be acquired by such a structure. But it is not a natural right, and if the structure intends to claim such a right, it would be only by a process of prescription. If on his land the plaintiff had built his structure and the structure had stood for the statutory period of twenty years, then it may have been open to the plaintiff to allege that the right to receive support from the adjoining plot of the defendant had been acquired by the plaintiff's wall by prescription, and if in such a case the said right had

been impaired or diminished, the plaintiff may have had a cause of action.

7. But it is not even alleged in the plaint that the wall has acquired such a right by prescription. Indeed, on the allegations made in the plaint and on the evidence adduced in this case, it does not appear to be in doubt that the wall in question was built in 1945, and therefore there can be no question of prescriptive acquisition of the right in respect of the wall. Therefore, in my opinion, looking at S. 7(b) and ill. (e) and the Explanation appended to it, it is difficult to accept the conclusion of the Courts below that, because the plaintiff's land in its unburdened and natural state was entitled to receive support from the defendant's land, the same right can be claimed by the wall which the plaintiff had built.

8. This conclusion receives support from the statement of the law to be found in Halsbury on this subject. Dealing with the natural rights to support, Halsbury observes that (Vol. II, p. 362)

> "every owner of land has 'ex jure natureae', as an incident of his ownership, the right to prevent such use of the neighbouring land as will withdraw the support which the neighbouring land naturally affords to his land".

9. The same principles apply, according to Halsbury, both to lateral or adjacent support from adjoining land, as also to the subjacent support of underlying strata where the surface of the land and the strata beneath it are different freeholds and belong to different owners, and to the right of the owner of a subterranean stratum to the support of the further strata beneath. Then Halsbury refers to the support for buildings by land, and he observes that the owner of land has no natural right to support for buildings or of the additional weight which the buildings cause, and that support to that which is artificially imposed upon land cannot 'exist ex jure natureae' because the thing supported does not itself so exist. Then it is

added that though no natural right can be claimed in respect of artificial structures, that does not prevent the owners of such artificial structures from acquiring such rights by the process of prescription.

10. The judgment of the House of Lords in — '***Dalton v. Angus', 1881-6 AC 740 (A)***, is always cited in this context as the leading judgment on the subject. In this case, the question which arose directly for decision was whether a building can acquire a right to lateral support from adjoining land by 20 years' uninterrupted enjoyment, and it was held that such a right can be acquired by prescription. While laying down the proposition that a right to receive lateral support may be acquired by a building by 20 years' user in the manner required by law, that is to say openly, continuously and without interruption, Lord Penzance was at pains to emphasize that "at any time within twenty years after the house is built the owner of the adjacent soil may with perfect legality dig that soil away, and allow his neighbour's house, if supported by it, to fall in ruins to the ground."

11. This will illustrate the sharp distinction between the right which is natural and which is available in respect of land in its natural and unburdened form, and a right which is acquired in respect of a structure built on the land. Whereas the right in respect of the land in its unburdened and natural form is properly so called, a natural right, the right in respect of the building is an artificial right which is acquired by the artificial process of prescription.

23. It was laid down by the Kerala High Court in ***Gopalakrishna Panicker Versus Thirunakkara Devaswom, AIR 1959 Kerala 202,*** that in the absence of any right of easement, any

damage to a person's house is not actionable in law. It was observed: -

> "10. We see a very great force in this contention of Mr Sivasankara Panicker. In fact, the trial Court has stated that an extreme contention was advanced on behalf of the defendants' counsel that a person putting up a wall at the extremity of his compound, does so at his own risk and that he cannot be heard to complain of any damage if the neighbour digs in his own land in the absence of an easement of support acquired by prescription or grant.
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> 11. Again, the learned Judge has stated that the question, which was canvassed at the bar, namely, that the natural right of lateral support extends only to land in its unburdened state and not to any artificial pressure put upon it, is only of academic interest in that case.
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> 12. No doubt, the position contended for may be very extreme, but it does get some support in law, and we get useful guidance from the provisions of the Indian Easements Act. Section 7 of the Act gives an exclusive right to every owner of immovable property to enjoy and dispose of the same, etc. The said section also gives a right to every owner of immovable property to enjoy without disturbance by another natural advantage arising from its situation. In this case, the finding of the learned Judge on the evidence is that the defendant's land is about 10 feet lower than that of the plaintiff.
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> 13. Illustration (e) to Sec. 7 and the Explanation is as follows :
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> > "The right of every owner of the land, that such land in its natural condition shall have the support naturally rendered by the subjacent and adjacent soil of another person.
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> > EXPLANATION: Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the "subjacent and adjacent soil" mentioned in this illustration means such soil

> only as, in" its natural condition, would support the dominant heritage in its natural condition.
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> It is clear that the plaintiffs' land in its natural condition will have the support naturally rendered by the defendants' land. The explanation also makes it clear that land, to have this right, should not have been subject to artificial pressure. There is evidence in this case that the compound wall, which is now stated to be affected, was only constructed about 10 years prior to suit, that is, about 1914. If so, we will have to see whether the plaintiff has got any further rights.
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> There again we have to look up to Sec 15 of the Act, which provides that lands, subject to artificial pressure, receiving support from another person's land, should have had that benefit without interruption for 20 years and that 20 years must expire 2 years before the institution of the suit. It is not certainly the plaintiff's case that he has acquired any such right. Therefore, in view of these provisions, the learned Judge was not right in disposing of the legal contention in that summary way indicated above.
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> 14. In view of the fact that the plaintiff, even on his own case, has not been able to satisfy the provisions of sections 7 and 15 of the Easements Act, the plaintiff's suit must fail. In this view, we think it unnecessary to consider the other contentions of the appellant.

24. Similarly, the Orissa High Court held in ***Bauribandhu Patra and Another Versus Sagar Malla, AIR 1966 Orissa 86,*** that damage caused to the house is not actionable in the absence of any right of easement. It was observed:-

> "2.... The submission made by the learned counsel appearing for the defendants is that the court below, in relying on the quotation from the Law of Torts by R.L. Ananda and Sastri, has erred in not appreciating that the

law as stated therein relates to a condition where the land is in its natural state and is not encumbered or burdened by any structure or building. Therefore, in a case, as the one here, where the land of the plaintiff was burdened by the structures, the rule of law as laid down in those quotations will have no application. In my opinion, this submission made by the learned counsel for the defendants is both on principle and authority correct. In the present case, both the Courts below have proceeded on the footing that the plaintiff has not acquired any right of easement or prescription in respect of the lateral support from the lands of the defendants, nor has he founded his claim on the basis of any easement or prescription. As such, the action of the plaintiff can at best be supported only on the ground of the natural right of property. In that regard, it has been rightly stated by Brindaban Katiar in his Law of Easement and Licenses that,

> "A man in exercise of his rights to property can build even to the very extremity of his land and his neighbour has no cause for complaint. . . . . .. If his neighbour, also in exercise of his natural right of property, digs to the very extremity of his land and his building slips into the pit, he has only to thank himself."

But the difficulty in the present case for the plaintiff is that his land, as it now stands, is not in its natural state, but is burdened by the boundary wall and also by the building. Therefore, the natural right of property as enunciated above in the aforesaid passage of Law of Easement and License by Brindaban Katiar can have no application to his case. The plaintiff can therefore succeed only if he establishes that the additional burden that has been thrown on his land as a result of the construction of the building and the boundary wall thereon has been in existence for more than 20 years, and as a result thereof, he has acquired by now a right of easement or a prescriptive right. Unfortunately, that is not the case,

> either set up or pleaded by him in the plaint. Therefore, on the facts of this case, the claim made in the plaint cannot succeed. The leading authority on the subject is the case of ***Dalton v. Henry Angus and Co (1881) 6 AC 740***. This has been uniformly followed by the courts in India, as is evident from the decisions in ***Gopalkrishna Panicker v. Thirunakkara Devaswom, AIR 1959 Kerala 202, Rasiklal v. Savai Lal, (s) AIR 1955 Bom 285, Ramgopal v. Gopikrishna, AIR 1957 M.P. 227; Abdul Raheman v. Mulchand, AIR 1928 Nag 91 (1), and In re Athi Ayyar, AIR 1921 Mad 322***. Therefore, in my opinion, the court below, in taking the view that it is a case which can be founded on tort for nuisance, has erred in law.

25. Calcutta High Court also held in ***Panchanan Mondal and Another versus Sm. Sulata Roy Mondal, AIR 1980 Calcutta 325***, held that the existence of buildings upon the land does not prevent the adjacent owner from withdrawing the right of support in the absence of any right of easement. It was observed:-

> 4. It has been contended on behalf of the appellants that the pleader commissioner's report and deposition clearly proved the plaintiffs' version. Reference has been made to p. 273 of ***Gale on Easements, 13th Edn.***, to show that there is no natural right to the support of a building per se. Support to that which is artificially imposed upon land cannot exist ex jure naturae because the thing supported does not itself so exist. If, however, land has been affected by the withdrawal of support and a building on it has also been affected and it is shown that the withdrawal of support would have affected the land in its natural state, in other words, that the land has been deprived of its natural right of support, damages may be recovered for the consequent injury to the building. Halsbury's Laws of

England, 3rd Edn., Vol. 12, p. 606, has been referred to show that the owner of land has no natural right to support for buildings or of the additional weight which the building causes. Support to that which is artificially imposed upon land cannot exist ex jure naturae, because the thing supported does not itself so exist. The mere fact that there are buildings upon the land does not preclude an owner from his right against a neighbour of the subjacent owner, who acts in such a manner as to deprive the land of support, so long as the presence of the buildings does not materially affect the question, or their additional weight did not cause the subsidence, which followed the withdrawal of support. Section 7(b) of the Indian Easements Act speaks of the right of every owner of immovable property to enjoy without disturbance by another the natural advantages arising from its situation. Illustration (e) thereof says that the owner of land has the right that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person. The principles of that Section apply to West Bengal. The evidence given by the P.Ws. clearly supports the plaintiffs' version of damage to the plaintiffs' land, wall and building by the defendant's action.

5. The learned Advocate appearing on behalf of the respondent has referred to the case of ***Ram Gopal v. Gopi Krishna, AIR 1957 Madh Pra 227***, where it has been stated that there is a distinction between a natural right of support to one's land in unburdened and natural state from the adjacent and subjacent land of the neighbouring owners and the right of support for buildings or structures standing on the land. While the former right is a natural incident of one's ownership of the land, the right to support for building or structure on the land is an easement and can be claimed only as an easement. If the owner of a building has not acquired such a right of casement of lateral support for his building from his neighbour’s land, the neighbour would be within his

rights in carrying on the excavation on his soil even if by so doing damage is caused to the building of his neighbour, provided, of course, there is no negligence in the excavation operations.

6. Both sides referred to the leading case of ***Dalton v. Angus in (1881) 6 AC 740***. A question arose in that case whether a building could acquire a right to lateral support from adjacent land by 20 years' uninterrupted enjoyment. It has been held that such a right could be acquired by prescription. A right to receive lateral support may be acquired by building for 20 years' use openly, continuously and without interruption.

7. In the case of ***Bengal Provincial Ry. Co. v. Rajani Kanta AIR 1936 Cal 564***, the allegation was that the defendant company had burrow pits on their own land for a long time, and the plaintiffs had their hut near those pits. In 1927 or 1928, they replaced their hut with a masonry building, which was raised close to the pits. In February 1930, the defendant company deepened the pit. But at that time, no damage was caused to the plaintiffs' building. After the rains had set in July 1930, the cracks appeared in the building. So damages were asked for from the railway company on account of damage caused to the plaintiffs' building. It has been stated that the natural right of support from a neighbour's land is available only in respect of land in an unburdened and natural state. An owner has no right to the support of his building or of his land burdened with the additional weight of his building unless such a right has been acquired as an easement. If there is no easement to have such lateral support, the neighbour is within their rights to make an excavation, provided that he does not act negligently. If there is no negligence, the plaintiff is not entitled to any damages caused to his building.

8. In this case, the facts are almost identical because the plaintiffs have alleged that after the defendant deepened the ditch, no immediate damage was caused to their land, wall or building. Only after the break of monsoon, i.e., in the middle of Sravan 1373 B.S., a portion of the plaintiffs'

> land and the western portion of their wall were engulfed by the tank. There is no finding by the courts below that the defendant's act was negligent. So on that score alone, the plaintiffs are liable to be non-suited.
> 9. There is yet another defect. In the case of ***Bengal Provincial Ry. Co. v. Rajani Kanta (supra)***, there was no evidence that the plaintiffs' land would have subsided even if it had been in a natural state and unburdened with their building by reason of the excavation made by the defendant company. This principle was discussed in the case of Ramgopal v. Gopikrishna (supra), cited on behalf of the respondent. This case was also discussed by Gajendragadkar, J., in the case of ***Rashiklal v. Savailal reported in AIR 1955 Bom 285***. It has been stated in that case that the effect of Illustration (e) of Sec 7(b) of the Easements Act is that the right, which is referred to in that Section, is applicable only to the land in its unburdened and natural state.
> It is not applicable to the structure built on the land unless there is a case of prescription. It may be stated that though that Act does not apply to Bengal, the principles of the Act nevertheless apply.

26. This position was reiterated in ***Jessy Raju v. Zacharia*, *2011 SCC OnLine Ker 3747 : (2011) 3 KLT 809,*** wherein it was observed at page 813:

> **11.** Thus, the law is clear. Just like the right of a person to construct a building or boundary wall up to the extremity of his property, his neighbour also has the right to dig to the very extremity of his property, provided the natural right available to the neighbour is not infringed. But that right is available only when the land is kept in its natural condition. If the person has built structures on his land and thereby added pressure on his property, the right of lateral support for the artificial pressure so caused, the natural right for the increased pressure cannot be

> claimed. It is to be acquired. Such right can be acquired only as provided under S. 15 of the Indian Easement Act.

27. Therefore, the preponderance of judicial opinion is that the land in a burdened state does not enjoy a right of support in the absence of any easement of support. In the present case, there is no evidence that the informant or any other person had acquired the right of easement by prescription, and the mere act of withdrawal of the support does not constitute any breach of duty. Since the law does not oblige a person to provide support to another's property in a burdened state; therefore, the prosecution's case that the accused was negligent cannot be accepted.

28. There is no evidence that the accused had intended to cause damage to the property of another, and the case is that the accused had acted negligently; hence, the offence punishable under Section 427 of the IPC is not made out.

29. Both the learned Courts below did not advert to the provision of easement, and the judgments and order passed by the learned Courts below cannot be sustained. Consequently, they are ordered to be set aside, and the petitioner/accused is acquitted of the charged offences. The fine, if deposited be

refunded to the petitioner/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

30. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioner/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

31. Records be sent back to the learned Courts below forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

1st January, 2026
(Chander)