

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 335 of 2015****Reserved on: 18.03.2026****Date of Decision: 01.4.2026.**

State of H.P.

...Appellant

Versus

Purshottam Singh

...Respondent

*Coram****Hon'ble Mr Justice Rakesh Kainthla, Judge.****Whether approved for reporting?¹ No*

For the Appellant : Mr Jitender K Sharma, Additional Advocate General.

For the respondent : Mr. Chaman Verma, Advocate vice Ms. Kiran Lata Negi, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 06.09.2014, passed by learned Chief Judicial Magistrate Kinnaur, District at Reckong Peo, H.P. (learned Trial Court), vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of offences punishable under Section 447 of the Indian Penal Code (IPC) and Section 33 of Indian Forest Act. (*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 appeal are that the police presented a challan before the learned Trial Court for the commission of offences punishable under Section 447 of the IPC and Section 33 of the Indian Forest Act. It was asserted that Goverdhan Dass (PW1) made a complaint to the police (Ex.PW1/A) stating that the accused, Devi Lal, had encroached upon more than 10 bighas of land bearing khasra nos. 29, 32, 464, 467, 486, 720, 1090 and 1097 measuring 0-98-31 hectares in Up Mohal Jani, Kalingo, and an action should be taken against him. The police registered an FIR (Ex.PW6/D). Devi Singh (PW2) demarcated the land and found that the accused Devi Lal had encroached upon khasra nos. 29, 32, 464, 467, 486, 720, 1090 and 1097, measuring 0-38-33 hectares (5 bighas 2 biswas) of government land. He prepared the report (Ex.PW2/A), recorded the statement of Purshottam Singh (Ex.PW2/E), joint statements of Goverdhan, Joginder and Sukhdev (Ex.PW2/F) and issued copies of the jamabandi (Ex. PW2/B and Ex. PW2/C) and Tatima (Ex. PW2/D). HC Sukhdev (PW6) investigated the matter. He visited the spot, prepared a

site plan (Ex. PW6/A) and took the photographs (Ex.P1 to Ex.P6). Copies of the notification (Ex. PW5/A) and working plan (Ex.PW5/B) were seized. 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.

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 Section 447 of the IPC and Section 33 of the Indian Forest Act, to which he pleaded not guilty and claimed to be tried.

4. Prosecution examined 6 witnesses to prove its case. Goverdhan Dass (PW1) made a complaint of encroachment. Devi Singh (PW2) demarcated the land. Sunita Devi (PW3) did not support the prosecution's case. Inder Singh (PW4) was present during the demarcation. Bhupinder Chauhan (PW5) produced the copies of the notification and working plan. HC Sukh Dev (PW6) investigated the matter.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He stated that the witnesses deposed against him falsely and that he was innocent. He did not produce any evidence in defence.

6. Learned Trial Court held that the accused was occupying the land for a long time, and the intent to insult, intimidate or annoy was not proved. Mere possession, even if illegal, is not sufficient to constitute criminal trespass. Hence, the learned Trial Court acquitted the accused.

7. Being aggrieved by the judgment passed by the learned Trial Court, the State has filed the present appeal asserting that the learned Trial Court erred in acquitting the accused. It was duly proved on record that the accused had encroached upon the Government land. The intention was to be gathered from the circumstances of the case. The accused continued to be in possession, which showed his intention. Clearing of the land is sufficient to attract the provisions of the Forest Act. The demarcation was conducted as per the law, and encroachment was proved. The prosecution had proved its case beyond a reasonable doubt, and the learned Trial Court erred in

acquitting the accused. Hence, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set-aside.

8. I have heard Mr Jitender Sharma, learned Additional Advocate General, for the appellant-State and Mr. Chaman Verma, learned counsel representing the respondent/accused.

9. Mr Jitender Sharma, learned Additional Advocate General, for the appellant-State, submitted that the learned Trial Court erred in acquitting the accused. It was duly proved by the evidence on record that the accused had encroached upon the Government land and raised an apple orchard over it. The learned Trial Court erred in holding that the necessary intention was not proved. The accused continued his possession of the government land, which showed his intent. The learned Trial Court had taken a view that could not have been taken by any reasonable person. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr. Chaman Verma, learned counsel representing the respondent/accused, submitted that the learned Trial Court had

rightly held that the mere possession is not sufficient to constitute criminal trespass. This was a reasonable view that could have been taken based on the evidence produced before the Court, and this Court should not interfere with the reasonable view of the learned Trial Court while deciding the appeal against the acquittal. Hence, he prayed that the present appeal be dismissed.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Surendra Singh v. State of Uttarakhand*, (2025) 5 SCC 433: 2025 SCC OnLine SC 176 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed at page 438:

“24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers

from patent perversity; that the same is based on a mis-reading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

13. This position was reiterated in *State of M.P. v. Ramveer Singh*, 2025 SCC OnLine SC 1743, wherein it was observed:

21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of *Babu Sahebagouda Rudragoudar v. State of Karnataka* (2024) 8 SCC 149; *H.D. Sundara v. State of Karnataka* (2023) 9 SCC 581 and *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.

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

15. The report of demarcation shows that the accused had encroached upon 5-02 bighas of land. This Court held in *Param Dev vs State of H.P.* 2015:HHC:236 that where the

encroachment was less than 10 bighas, the FIR could not be lodged. It was observed:-

“The FIR aforesaid was lodged against the bail applicant for the purported commission of penal acts constituted under the aforesaid statutory provisions, in pursuance of the directions rendered by this Court in Cr.MP(M) No. 1299/2008. This Court had rendered peremptory directions to the respondent to institute/lodge FIRs. against those encroachers who had encroached upon more than 10 bighas of Government/forest land. Obviously, given the fact that the petitioner herein has purportedly encroached upon Government/forest land to the extent of an area measuring 8-6-17 bighas, as such, when the Government/forest land purportedly encroached upon by the petitioner herein constitutes an area less than 10 bighas, naturally then when FIRs were directed to be lodged against encroachers upon Government/forest land, who have encroached therein beyond 10 bighas, which is not the extent of the area of Government/forest land purportedly encroached upon by the petitioner herein/accused, no FIR in pursuance to the directions of this Court was either lodgable or instituteable against the petitioner herein. In sequel, when the FIR as lodged against the petitioner was unlodgable against him, obviously then its being lodged against the petitioner in sequel whereof a Notice of Accusation put to him, constitutes an infraction of the directions issued by this Court in Cr.MP(M) No. 1299/2008, rendering it to be interferable and quashable.”

16. Therefore, the FIR could not have been registered in the present case, and the learned Trial Court had rightly acquitted the accused.

17. Section 441 of the IPC defines criminal trespass as an entry upon the property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. It was laid down by the Hon'ble Supreme Court in *Mathri v. State of Punjab*, 1963 SCC OnLine SC 180: AIR 1964 SC 986 that the prosecution has to prove that the aim of the accused was to insult, intimidate or annoy and merely because the insult, intimidation or annoyance was caused by the entry is not sufficient. It was observed:

18. We think, with respect, that this statement of law, as also the similar statements in *Laxaman Raghunath case* [26 Bombay 558] and in *Sellamuthu Servaigaran case* [ILR 35 Mad 186], is not quite accurate. The correct position in law may, in our opinion, be stated thus: In order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering; that in deciding whether the aim of the entry was the causing of such annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something else than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry.

18. This position was reiterated in *Rajinder v. State of Haryana*, (1995) 5 SCC 187: 1995 SCC (Cri) 852, wherein it was observed at page 198:

“21. It is evident from the above provision that unauthorised entry into or upon property in the possession of another or unlawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate, insult or annoy the person in possession of the property. In other words, unless any of the intentions referred to in Section 441 is proved, no offence of criminal trespass can be said to have been committed. Needless to say, such an intention has to be gathered from the facts and circumstances of a given case...”

19. In the present case, the complaint (Ext.PW1/A) only mentioned that the accused had encroached upon more than 10 bigahs of land, and an action should be taken against him. There is no averment that the accused had encroached upon the land with an intent to commit an offence or intimidate, insult or annoy any person in possession; therefore, the ingredients of Section 447 of IPC were not satisfied.

20. Section 29 of the Forest Act provides that the State Government may, by notification in the official Gazette, declare the provisions of Chapter IV of the Act applicable to any forest land or wasteland which is the property of the Government, or

over which the Government has proprietary rights. Section 30 authorises the State Government to prohibit the breaking up or clearing for cultivation of any land in a protected forest for such terms, not exceeding thirty years, as the State Government thinks fit. Section 31 of the Forest Act provides for the affixation of the translation of every such notification issued under Section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest. Section 32 entitles the State Government to make rules to regulate the clearing or breaking up of land for cultivation or other purposes in such a forest. Section 33 of the Forest Act provides penalties for acts in contravention of a notification under Section 30 or for rules under Section 32.

21. This Court held in *State of H.P. vs. Amin Chand* 1992 (2) *Shim.LC* 169 that the issuance of the notification and its publication are necessary to attract the provisions of Section 33 of the Indian Forest Act. It was observed:-

“7. Sections 29 to 39 of the Indian Forest Act, 1927 (shortly hereinafter referred to as 'the Act') are material. The procedure of declaring protected forest is laid down in section 29 of the Act, which provides that the State Government may by notification in the official Gazette declare the provisions of Chapter IV of the Act applicable

to any forest land or wasteland which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government Is entitled. The forest land comprised in such notification is referred to in the Act as a protected forest. Sub-section (3) of section 29 of the Act provides for certain inquiries to be made before declaring a forest as a 'protected forest'. Under section 30, the State Government is authorised inter-alia to declare any trees or class of trees in protected forest to be reserved from the date to be fixed by notification or to prohibit from a date fixed for the removal of any forest produce and the breaking up or clearing for cultivation of any land in a protected forest for such terms, not exceeding thirty years as the State Government thinks fit. Resultantly, the rights of private persons, if any, over such portion shall stand suspended during such term, provided that the remainder of such forest be sufficient and, in a locality, reasonably convenient, for the due exercise of the rights suspended in the portion so closed. The Collector then is required under section 31 to cause translation into the local vernacular of every such notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification. Section 32 entitles the State Government to make rules to regulate the forest matters set out in the said section, including "clearing or breaking up of land for cultivation or other purposes in such forest". Section 33 provides penalties for acts in contravention of a notification under section 30 or for rules under section 32.

9. Apart from it, even if the aforesaid copy of the notification is assumed to be a legal and valid notification for the sake of argument, the requirement of section 31 of the Act has not been proved. Admittedly, as per the prosecution evidence, the land of the accused adjoins that of the alleged encroached land. Section 31 referred to above envisages that the Collector shall cause a translation

into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification Here neither oral nor documentary evidence has been adduced to show whether notification (Mark X) was translated in the local vernacular and whether its copy was affixed in a conspicuous place in the neighbouring villages as envisaged therein This procedure is meant only so that the respondents of the neighbouring villages, much less the accused, may acquire knowledge as to the declaration of a particular forest into demarcated protected forest, In the absence of such procedure having not been followed by the appellant, ii would be against the principle of natural Justice to permit the subject of a Slate including the accused to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence, have acquired any knowledge Natural justice requires that before a law can become operative it must be promulgated or published It must be broadcast in some recognisable way so that all persons may know what it is ; or at the very least, there must be some special rule or regulation or some other way or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. In the absence thereof, a law cannot come into being by merely issuing a notification without giving it due publicity in accordance with the mandatory provisions of law.”

22. This position was reiterated in *State of H.P. Ravi Kumar 2008 HLJ 363*, wherein it was observed: -

“10. The prosecution has failed to prove that ten pine trees were cut by the respondent from the land in question. There is no evidence on record to link the trees allegedly cut by the respondent to the land in question. No demarcation of the land from where the trees were

allegedly cut has been proved on record. There is nothing on record that the forest in question is a notified protected forest. The notification declaring the Forest in question as a protected forest has not been placed on record. There is no evidence of circulation of notification, under Sections 32, 33, read with Sections 30 and 31 of the Act, in the vernacular in the locality. The alleged confessional statements, Ex. PA and Ex. PW 2/A are of no help to the prosecution for want of proof of notification, under Sections 32, 33, read with Sections 30 and 31 of the Act and its publication in the vernacular in the locality...”

23. In the present case, no person deposed about the publication of the notification in the vicinity; hence, the provisions of Section 33 of the Forest Act are not attracted to the present case.

24. No other point was urged.

25. Consequently, the present appeal fails, and it is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

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

27. Records be sent back to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

1st April, 2026
(Nikita)