

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Appeal No. 376 of 2014**

**Reserved on: 03.03.2026**

**Date of Decision: 01.4.2026.**

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State of H.P.

...Appellant

Versus

Kalyan Singh

...Respondent

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*Coram*

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

*Whether approved for reporting?<sup>1</sup> No*

For the Appellant : Mr Ajit Sharma, Deputy Advocate General.

For the respondent : Mr N.K. Tomar, Advocate.

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***Rakesh Kainthla, Judge***

The present appeal is directed against the judgment dated 30.5.2014, passed by learned Judicial Magistrate First Class, Rajgarh, District Sirmour, 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 26 of Indian Forest Act. *(Parties shall hereinafter be referred to in the*

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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 26 of the Indian Forest Act. It was asserted that Amar Singh (PW6) made a complaint to the police (Ex.PW6/A) stating that the accused, Kalyan Singh, had encroached upon more than 10 bighas of land in the Reserved Forest, Manva and Kaloha; hence, an action should be taken against him. The police registered an FIR (Ex.PW7/A). Yoginder Sain (PW5) demarcated the land and found that the accused, Kalyan Singh, had encroached upon Khasra Nos. 644/1, 646/1, and 804/641/1, measuring 30 bighas 13 biswas, which was owned by the State. He prepared the report (Ex.PW5/A), recorded the joint statements (Ex.PW5/B) and issued a jamabandi (Ex. PW5/C). HC Sanjay Kumar (PW7) investigated the matter. He visited the spot, prepared a site plan (Ex. PW7/B) and took the photographs (Ex. P1 to Ex. P4). Notification (Ex.PW6/B) and a copy of the working plan (Ex.PW6/C) were seized by the police. 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 26 of the Indian Forest Act, to which he pleaded not guilty and claimed to be tried.

4. Prosecution examined 8 witnesses to prove its case. Jai Singh (PW1) detected the encroachment. Kalidass (PW2) and Roop Lal (PW4) were present during demarcation. Sandeep Kumar (PW3) entered the contents of the FIR in the official computer. Yoginder Sain (PW5) demarcated the land. Amar Singh (PW6) made a complaint to the police. HC Sanjay Kumar (PW7) investigated the matter. ASI Rajesh Pal (PW8) signed the FIR.

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 he had not encroached on any Government land. He produced Laxmi Singh (DW1) in defence.

6. Learned Trial Court held that the demarcation was not conducted as per law because three permanent points were not taken, and the accused was not present during the demarcation. The accused was occupying the land since the time of his forefathers, 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. Yoginder Sain (PW5) conducted the demarcation as per the law after following the prescribed procedure. Learned Trial Court erred in holding that three permanent points were not taken, whereas the report of demarcation, a copy of musabi and the field book clearly showed that fixed points were taken. There was no boundary dispute

between the parties, and the report of demarcation was not relevant. It was wrongly held that the accused was occupying the land since the time of his forefathers. The accused admitted that an encroachment case was instituted against his father before Divisional Forest Officer (DFO) Rajgarh, which showed that the accused was aware of the encroachment on the government land. He continued his possession, which showed his intent. The trespass into the Government land could only be with the intent to annoy the State. 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 Ajit Sharma, learned Deputy Advocate General, for the appellant-State and Mr N.K. Tomar, learned counsel for the respondent/accused.

9. Mr Ajit Sharma, learned Deputy 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 and house over it. The learned Trial Court erred in holding that the report of the demarcation was not as per the law. The accused continued his possession of the government land despite the initiation of proceedings of ejectment against his father. 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 N.K. Tomar, learned counsel for the respondent/accused, submitted that the learned Trial Court had rightly held that the demarcation was not conducted as per the law. Three permanent points were not taken, and the accused was not summoned to witness the demarcation. Mere possession is not sufficient to constitute criminal trespass. No notification was placed on record to show that the area was a reserved forest. The learned Trial Court had rightly acquitted the accused. 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. Yoginder Sain (PW5) demarcated the land. He stated that he conducted the demarcation and found the accused Kalyan Singh had encroached upon Khasra Nos. 644/1, 646/1, and 804/641/1, measuring 30 bighas 13 biswas, by raising an apple orchard and a house. He prepared his report (Ex.PW5/A), which mentions that the boundaries were measured by drawing

perpendiculars, and these were shown to the police and forest officials.

16. Yoginder Sain (PW5) stated in his cross-examination that perhaps he had taken three permanent points, but he did not remember the Khasra number in which those points were taken. He admitted that the private land was located adjacent to the government land, and he was not competent to carry out demarcation in the present case. He had not issued any notice to the accused regarding his presence on the spot at the time of the demarcation. He volunteered to say that the notice was issued by Patwari.

17. The process of demarcation was explained by this Court in *State of H.P. v. Laxmi Nand*, 1992 SCC OnLine HP 41:1992(2) Sim. L.C. 307, wherein the instructions issued by the Financial Commissioner were considered, and it was held: -

“17. It is the admitted case of the parties that, in so far as the three revenue estates are concerned, the maps prepared during the last settlement were not on the square system. Accordingly, the determining officer was required to relay the boundaries of the fields sought to be demarcated from the Shajra (village map), prepared at the last settlement. He was required to locate three permanent points on three different sides of the area sought to be demarcated. The three points so selected and

to be taken as a basis must be those which are admitted to have remained undisputed from the last settlement. The officer is thereafter required to chain these three points on the spot and then compare the result with the distance given as per the scale on the Shajra. It is only when the distances so compared agree that the Revenue Officer can proceed with further work of measurement. A pencil line is supposed to be drawn joining these three permanent points and thereafter perpendiculars are supposed to be drawn from these lines to each of the points, which are required to be located on the spot, in order to enable him to find out the exact distance from these points to the point sought to be demarcated, and then tally the result with the help of the scale on the Shajra, which can be drawn only with the help of the scale on the Shajra, which can be drawn only with the help of a crossed staff. The result is to be finally checked by measuring with the help of a scale on the Shajra. Since this report of demarcation is liable to scrutiny, by way of evidence, it is required that the report of the concerned officer on the face of it must explain the details and the manner as to how he made his measurements, which report must accompany a copy of the relevant portion of the Field Book of current settlement of the village showing KaruKans (dimensions) of the fields of which he took measurements as also a map showing therein the three permanent points, the fields measured and the boundary in dispute. As per the instructions, this is one of the necessary requirements to enable the Court to follow the method adopted and also in order to find out the veracity of the proceedings. The other requirement, while submitting the report, is to record the statements of interested parties before taking the three permanent points to the effect that all of them agreed and accepted the three points as permanent points on three different sides of the property. In case any objection is raised as to the manner in carrying out the demarcation, the said objection is required to be reduced into writing, so as to avoid the possibility of raising any question specifically and also to enable the Court to

decide such objections. In case an objection is raised on the spot, the demarcating officer is also required to submit his opinion on such objections. In case, while carrying out the demarcation, any discrepancy is noticed in the area of the fields abutting on the boundary in dispute as recorded in the last settlement and the one arrived at as a result of the actual measurement on the spot, the report is required to incorporate the same with an explanation as to the cause of increase or decrease, if any, discovered on the spot. All these requirements, in our opinion, have been incorporated in the instructions with the ultimate object of ascertaining that while carrying out the demarcation correct method was adopted and no mistake was committed.”

18. The Court considered a similar report was considered in *Laxmi Nand* (supra), and held that when the details of the process adopted in the demarcation were not given, such a report is not admissible and cannot be used for convicting the accused. It was observed:

“8. Now, in case reference is made to the three reports of demarcation alleged to have been carried out by Kewal Ram, Sadar Kanungo, namely, Exs. PO, PO/1 and PO/2, it can be seen that, as a matter of fact, they are not the demarcation reports but are only certificates to the effect that he carried out the demarcation of the fields mentioned therein. There is nothing on record that such demarcation was carried out by Kewal Ram as per the aforementioned instructions. There are copies of Shajra Exs. PP and PR of revenue estate Gwalath appended to these certificates, but neither is there any mention of the three permanent points on these copies, nor do these contain the result of demarcation, namely, drawing of perpendicular lines or depicting the location of stumps on any portion of the government land. There are two other

copies appended to these certificates, but apparently, the same are of subsequent date, namely, Ex. PT dated January 28, 1978 and Ex. P-4 dated January 24, 1978, but there is also no such endorsement on the copies. In the absence of there being any report of demarcation, it is not possible to place reliance upon these certificates issued by Kewal Ram, which form the basis of lists Exs. PH, PK and PL, which are stated to have been prepared by Magni Ram, PW3, according to whom none of the accused was present at the time of carrying out demarcation by Kewal Ram. He was also not in a position to state whether any proper method was adopted by Kewal Ram while carrying out demarcation, since he was also not conversant with the demarcation work of lands. As such, the Special Judge was perfectly justified in concluding that no reliance could be placed upon the certificates issued by Kewal Ram or as to the correctness of lists Exs. PH, PK and PL, which admittedly had been prepared as a result of the certificated issues by Kewal Ram and the same could not be used for forming the basis while holding that any tree was felled by the accused-respondents Nos. 7 and 8 from the government land comprised in Khasra Nos. 8 and 68 in Mauza Gwalath and Khasra No. 2 in jungle Mihani.”

19. In the present case, the report of the demarcation does not describe the procedure, and no reliance can be placed upon it.

20. Yogender Sain (PW5) admitted in his cross-examination that the private land was located adjacent to the disputed land. Thus, the demarcation was essential to pinpoint the land over which an orchard and house were raised. In the absence of the proper demarcation, it was not established that

the orchard and house were raised on the government land, and the learned Trial Court had rightly discarded the prosecution's case that the accused had encroached upon the government land.

21. Yoginder Sain (PW5) stated in his cross-examination that no summons was issued to the accused. He volunteered to say that intimation was given through Patwari. Patwari was not examined to prove that any notice was served upon the accused. No copy of the notice was placed on record. HC Sanjay Kumar (PW7) admitted in his cross-examination that the accused was not present at the time of demarcation. Thus, the demarcation was conducted in the absence of the accused. It was laid down by this Court in *State of H.P. vs. Joginder Singh 1992 (1) Shim. LC 339*, that where the demarcation was conducted in the absence of the accused, the same cannot be relied upon to convict him. It was observed:

“7. Be that as it may, the testimony of PW-3 Keshav Ram, Kanungo, shows that only Forest Officials were present at the time of demarcation. Assuming that the said demarcation was properly done by him at the material time while verifying the tatima Ex. PW-2/A, but no notice to the accused at the material time has at all been served, nor was he present at the relevant time. In that view of the matter, the demarcation has not been done properly

according to the instructions issued by the Financial Commissioner, Himachal Pradesh. A very basic foundation in view of it is wiped out. I need not discuss the other evidence resulting in the conclusion arrived at by the trial Court. To my mind, the Court below has rightly considered the evidence in recording the impugned order of acquittal. Accordingly, the appeal is dismissed.”

22. 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.

23. 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...”

24. In the present case, the complaint (Ext.PW-6/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.

25. Section 26 of the Indian Forest Act deals with the acts prohibited in reserved forests. Section 4 of the Indian Forest Act provides that whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in a Government Gazette declaring that it has been decided to constitute such land a Reserved Forest and specifying as nearly as possible its situation and limits.

26. Section 6 of the Indian Forest Act provides that when a notification is issued under Section 4 of the Act, the Forest Settlement Officer shall publish a proclamation specifying as nearly as possible the situation and limits of the proposed forest in the local vernacular in every town and village in the neighbourhood of the land comprised therein. While dealing with a similar provision of the Forest Act in Chapter IV, 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, it would be against the principle of natural justice to permit the subject of a State 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.”

27. 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...”

28. In the present case, no copy of the notification was placed on record to show that Khasra Nos. 644/1, 646/1, and 804/641/1, measuring 30 bighas 13 biswas, was declared a Reserved Forest.

29. Reliance was placed upon the notification (Ex.PW5/C), which mentions C3a to C6 measuring 815.72. It does not mention any Khasra number. Therefore, there is no evidence that the land was within the Reserved Forest, and no offence punishable under Section 26 of the Indian Forest Act was made out.

30. No other point was urged.

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

32. 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.

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

**(Rakesh Kainthla)**  
**Judge**

**1<sup>st</sup> April, 2026**  
**(Nikita)**