

IN THE HIGH COURT OF HIMACHAL PRADESH, SHI MLA

Cr. MMO No. 117 of 2026

Reserved on: 14.07.2026

Date of Decision: 20.07.2026.

Ram Chand

...Petitioner

Versus

The State of H.P. & others

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner : Mr B.L. Soni, Advocate.

For Respondents : Mr Ajit Sharma, Deputy
Advocate General, for
respondents No. 1 and 2.

Mr Maan Singh, Advocate, for
respondent No.3.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for setting aside the order dated 25.07.2025, passed by the learned Chief Judicial Magistrate, Lahaul & Spiti at Kullu, H.P. (learned Trial Court) vide which the District Revenue Officer was directed to sell the petitioner's property, which was already under attachment in compliance with the direction of the Court.

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

2. Briefly stated, the facts giving rise to the present petition are that the petitioner/accused was convicted by the learned trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). The petitioner was sentenced to undergo rigorous imprisonment for 6 months and pay a compensation of ₹11,00,000/-. The accused filed an appeal before a learned Sessions Judge, who ordered the suspension of the sentence subject to the deposit of 50% of the amount of compensation within 3 months; however, the petitioner failed to comply with the order. He was arrested and committed to Central Jail, Nahan, to serve out the sentence. The petitioner failed to deposit the amount. Hence, an application was filed for directing the petitioner to deposit the amount of compensation.

3. The learned Trial Court ordered the attachment of the property. The petitioner failed to deposit the money, and the learned Trial Court ordered the sale of the petitioner's property.

4. Being aggrieved by the order passed by the learned Trial Court, the petitioner has filed the present petition, asserting that the learned Trial Court erred in ordering the sale of the petitioner's property. The Court had no jurisdiction to order the

sale after issuance of a warrant in terms of Section 421 (1)(b) of the Code of Criminal Procedure (Cr.P.C.), the compensation is required to be recovered in terms of Section 431 of the CrPC as arrears of land revenue. Therefore, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

5. I have heard Mr B.L. Soni, learned counsel for the petitioner, Mr Ajit Sharma, learned Deputy Advocate General, for respondents No.1 and 2/State and Mr Maan Singh, learned counsel for respondent No.3 (i) to 3(iii).

6. Mr B.L. Soni, learned counsel for the petitioner, submitted that the Court has to issue a warrant of recovery under Section 421 of Cr.P.C. to realise the amount as arrears of land revenue. The Collector has to proceed under the provisions of the HP Land Revenue Act thereafter. Only the Collector has the jurisdiction to order the sale of the immovable property, and the Court has no jurisdiction to order the sale. Learned Trial Court erred in ordering the sale of the property. Therefore, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

7. Mr Ajit Sharma, learned Deputy Advocate General for the respondents No.1 and 2/State submitted that the learned Trial Court was competent to order the attachment and sale of the property as arrears of land revenue. The Court could have sold the property, and there is no infirmity in the order passed by the learned Trial Court. Therefore, he prayed that the present petition be dismissed.

8 Mr Maan Singh, learned counsel for the respondent No.3(i) to 3(iii), submitted that the petitioner is not absolved of his liability to pay the compensation by suffering the imprisonment. The learned trial Court had rightly issued the warrant, and there is no infirmity in the order passed by the learned Trial Court. Therefore, he prayed that the present petition be dismissed. He relied upon the judgment of the Hon'ble Supreme Court in *Kumaran vs State of Kerala 2017(7) SCC 471* in support of his submission.

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

10. Section 431 of the CrPC provides that when any money is payable by virtue of any order made under the Code and the method of recovery is not provided, it shall be recovered as if it

were a fine. Section 421(b) empowers the Court to issue a warrant to the Collector authorising him to realise the amount as arrears of land revenue from the movable or immovable property of the defaulter. Section 421(3) provides that the Collector shall realise the amount in accordance with the law relating to the recovery of the arrears of land revenue.

11. Chapter VI of the HP Land Revenue Act, 1954, deals with the collection of land revenue. Section 81 of the HP Land Revenue Act provides for the sale of the estate or holding. It reads that the Collector, with the previous sanction of the Commissioner, may, in addition to or instead of all or any of these processes, sell the estate or holding in respect of which the arrears are due. Thus, it is apparent that, as per Section 81 of the HP Land Revenue Act, 1954, the sale has to be made by the Collector and not by the Court.

12. It was laid down by the Punjab and Haryana High Court in *Roshan Lal vs. Krishan Lal*: 1991 Cri LJ 428, that the Chief Judicial Magistrate is not competent to sell any property under Section 421 of CrPC, and he can only issue a warrant to the Collector of the District. It was observed:

4. After hearing the learned counsel for the parties, I find force in the contentions raised on behalf of the petitioner. The Chief Judicial Magistrate was not competent for the attachment or sale of any immovable property under section 421 of the Code of Criminal Procedure. For that purpose, he could issue a warrant to the Collector of the District as provided therein.

13. Therefore, the learned Trial Court erred in passing an order of sale; this jurisdiction was not vested with the learned trial Court and was to be exercised by the Collector under the provisions of the HP Land Revenue Act.

14. The judgment of the Hon'ble Supreme Court in *Kumaran (supra)* provides that the liability of the accused to pay the compensation is not wiped out by undergoing imprisonment. In the present case, the petitioner/accused is not denying his liability to pay the compensation. His concern is that only the Collector and not the Trial Court is competent to carry out the sale. Therefore, the cited judgment does not apply to the present case.

15. In view of the above, the present petition is allowed, and the order dated 25.07.2025, passed by the learned Chief Judicial Magistrate, Lahaul and Spiti at Kullu, District Kullu, H.P. in Cr.MA No. 304 of 2017, titled Shyam Sunder vs. Ram Chand, is ordered to be set aside.

16. The observations made hereinbefore shall remain confined to the disposal of the present petition and will have no bearing whatsoever on the merits of the case.

17. The present petition stands disposed of, and so are the pending miscellaneous applications, if any.

(Rakesh Kainthla)
Judge

20th, July, 2026.
(ravinder)