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Review Procedures: Appeals

24.1. Object and scope of the chapter.—Human judgment is not infallible. Despite all the provisions for ensuring a fair trial and a just decision, mistakes are possible and errors cannot be ruled out. The Code therefore provides for "appeals" and "revisions" and thereby enables the superior courts to review and correct the decisions of the lower courts. Apart from its being a corrective device, the review procedure serves another important purpose. The very fact that the decision of the lower court is duly scrutinized by a superior court in 'appeal' or 'revision' gives certain satisfaction to the party "aggrieved" by that decision. The review of the case by superior courts, in a way, assures the aggrieved party that all reasonable efforts have been made to reach a just decision free from plausible errors, prejudice and mistakes. Review procedures are therefore importantly useful to inspire in the public mind a better confidence in the administration of criminal justice.

The Supreme Court has observed:

> "One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with loss of liberty, is basic to civilized jurisprudence. It is integral to *fair* procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal... as provided in the Criminal Procedure Code, manifests this value upheld in Article 21."[1]

Appeal is one of the two important review procedures, and the present chapter attempts to discuss all its aspects. The next chapter deals with 'revision'.

An appeal is a complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the court above is called upon to correct or reverse.[2]

An appeal is a creature of statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself.[3]

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1. *M.H. Hoskot* v. *State of Maharashtra*, (1978) 3 SCC 544: 1978 SCC (Cri) 468, 476: 1978 Cri LJ 1678.
2. *Black's Law Dictionary*, 4th Edn., p. 124.

(4) When the accused is sentenced to death by any Court and an appeal lies from such judgment as of right the Court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

(5) Save as otherwise provided in sub-section (2), any person affected by a judgment or order passed by a Criminal Court shall, on an application made in this behalf and on payment of the prescribed charges, be given a copy of such judgment or order or of any deposition or other part of the record:

Provided that the Court may, if it thinks fit for some special reason, give it to him free of cost.

(6) The High Court may, by rules, provide for the grant of copies of any judgment or order of a Criminal Court to any person who is not affected by a judgment or order, on payment, by such person, of such fees, and subject to such conditions, as the High Court may, by such rules, provide.

When any person is affected by a judgment or order passed by a criminal court, then on an application made in this behalf under Section 363(5) and on payment of prescribed charges, a copy of the order, deposition or any other part of the record has to be given to him irrespective of the fact whether he has appeared in court or not.[64]

23.19. Translation of judgment when to be kept.—The original judgment is required to be filed with the record of the proceedings and where the original is recorded in a language different from that of the court and the accused so requires, a translation thereof into the language of the court shall be added to such record [Section 364].

23.20. Court of session to send copy of finding and sentence to District Magistrate.—In cases tried by the court of session or a Chief Judicial Magistrate, the court or such magistrate, as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District Magistrate within whose local jurisdiction the trial was held [Section 365].

The purpose of sending a copy of the judgment as mentioned above is to enable the District Magistrate to be posted with information about serious offences.

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64. *Shree Lal Sarof* v. *State of Bihar*, 1979 Cri LJ 895, 896 (Pat).

The appeal as a corrective procedure would obviously be far less relevant in cases where the chances of error in the judgment of the trial court are very remote. Further, the review of the case in appeal means additional time and expense for the final disposal of the case. Therefore in petty cases where the possible error in the decision of the lower court is more likely to be of insignificant nature, it would be inexpedient to allow appeals in such cases. These considerations have found expression in the provisions of the Code. In cases where the accused has been convicted on his own plea of guilty, the Code justifiably disallows any appeal against the order of conviction, but fairly permits under certain circumstances an appeal as to the extent or legality of the sentence passed on the accused person. It will further be seen that the Code does not *generally* favour a second appeal.

The chapter would consider the circumstances in which appeals can be filed against the orders of convictions or of acquittals and also the conditions in which the Government can appeal on the ground of inadequacy of the sentence passed on the accused person. The chapter further deals with the form of appeal, the procedure for its filing, the manner in which it is heard, the powers of the appellate court in disposing of an appeal, the abatement of appeal under certain circumstances, and other ancillary matters.

A right of appeal carries with it a right of rehearing on law as also on facts. Generally there is no right of hearing on facts or appreciation of evidence in a revision.[4] A rehearing of the case could, however, be ordered in exercise of revisional power.[5]

Provisions regarding appeals from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour are contained in Section 373, but they can be more conveniently discussed along with the main provisions relating to security proceedings. These would be discussed later in Chapter 28.

24.2. No appeal in certain cases.—(1) *No appeal unless provided by law.*—Section 372 lays down the general principle that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. It is, therefore, necessary to bear in mind that an appeal is a creature of statute and that there is no inherent right of appeal.[6]

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3. *Durga Sankar Mehta* v. *Raghuraj Singh*, AIR 1954 SC 520.
4. *State of Kerala* v. *Sebastian*, 1983 Cri LJ 416, 418 (Ker).
5. *T.V. Hameed, In re*, 1986 Cri LJ 1001 (Ker).
6. *See* observations of the Supreme Court in *Akalu Ahir* v. *Ramdeo Ram*, (1973) 2 SCC 583: 1973 SCC (Cri) 903, 905: 1973 Cri LJ 1404, 1405.

As will be seen later, this chapter provides for appeals in certain cases as mentioned in Sections 373, 374, 377, 378, 379, 380. Apart from these general sections, there are also other provisions in the Code giving the right of appeal in some specific areas. For example, Sections 86, 237(7), 250(6), 341, 351(1), 449 etc.[7]

(2) *No appeal in petty cases.*—Section 376 provides that there shall be no appeal by a convicted person in any of the following cases, namely—

(*a*) Where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of the fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(*b*) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(*c*) where a magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(*d*) where, in a case tried summarily, a magistrate empowered to act under Section 260[8] passes only a sentence of fine not exceeding two hundred rupees.

However, the proviso to Section 376 explains that an appeal may be brought against the abovementioned non-appealable sentence if any other punishment is combined with it. But it is further explained that such sentence shall not be so appealable merely on the ground—

(*i*) that the person convicted is ordered to furnish security to keep the peace; or

(*ii*) that a direction for imprisonment in default of payment of fine is included in the sentence; or

(*iii*) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

It may be recalled here that according to Section 31(3), for the purpose of appeal by a convicted person, the aggregate of the consecutive sentences of imprisonment passed against him at one trial shall be deemed to be a single sentence.[9]

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7. See *supra*, paras 5.14, 19.8, 20.12, 10.5(2), 16.19, 12.13.
8. See *supra*, para 21.13.
9. See *supra*, para 23.9.

(*3*) *No appeal where the accused is convicted on his plea of guilty.*— Where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,—

(*a*) if the conviction is by a High Court; or

(*b*) if the conviction is by a court of session, metropolitan magistrate or magistrate of the first or second class, except as to the extent or legality of the sentence [Section 375].

The rationale behind the above Section 375 is that a person who deliberately pleads guilty cannot be aggrieved by being convicted. When a person is convicted by *any* court on the basis of his own plea of guilty, he cannot and should not have any grouse against the conviction and hence is not entitled to appeal from such a conviction. However, if the plea of guilty is not a *real* one and is obtained by trickery, it is not a plea of guilty for the purposes of the above rule.[10] It is only when there is a genuine plea of guilty made freely and voluntarily that the bar under Section 375 would apply.[11] In *Thippaswamy* v. *State of Karnataka*,[12] the Supreme Court observed that it would be a violation of Article 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision, to enhance the sentence. A person, by pleading guilty, does not commit himself to accept the punishment that would be passed against him irrespective of its nature and legality. Therefore, he is not denied the right to challenge the extent or legality of the sentence. However, this is subject to one exception. That is, where a High Court convicts and sentences a person on a plea of guilty, an appeal is not allowed even as regards the extent or legality of the sentence, because it can hardly be contemplated that the judgment of a High Court would suffer from a serious infirmity in respect of the extent or legality of the sentence.[13]

24.3. Appeals from convictions.—(1) *Appeal to the Supreme Court*:

(*a*) Subject to the restrictions on appeals as mentioned in para 24.2 above, any person convicted "on a trial held by" a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court [Section 374(1)]. Since such trials are extremely rare, it was felt that, in the interests of finality to the proceedings appeal should lie direct to the Supreme Court and not to another bench of the same High Court.[14]

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10. *Prafulla Kumar Roy* v. *Emperor*, AIR 1944 Cal 120: 45 Cri LJ 517, 518.
11. *State of Kerala* v. *Gopinath Pillai*, ILR (1978) 2 Ker 267: 1980 Cri LJ 39 (Ker) (NOC).
12. (1983) 1 SCC 194: AIR 1983 SC 747.
13. *See* 41st Report, p. 259, para 31.11.
14. *See* 41st Report, p. 259, para 31.10.

(*b*) Where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal as of right to the Supreme Court (Section 379). By this Section 379 the provisions of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 have been incorporated in the Code.

(*c*) The Constitution provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution [Article 132(1)]. Further, where the High Court has refused to give such a certificate the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution, grant special leave to appeal from such judgment, decree or final order [Article 132(2)]. Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court, on any other ground [Article 132(3)].

(*d*) Article 134(1) of the Constitution, *inter alia* provides that an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court, if the High Court—

(*i*) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(*ii*) certifies that the case is a fit one for appeal to the Supreme Court.

(*e*) Article 136(1) of the Constitution provides that the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal.

However the above rule shall not apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the armed forces [Article 136(2)].

It has been reiterated by the Supreme Court that in cases which do not come under clauses (*a*) and (*b*) of Article 134(1) or under the Act of 1970 or Section 379 of the Code an appeal does not lie *as of right* to the Supreme Court against any order of conviction by

the High Court. In such cases appeal will lie only if a certificate is granted by the High Court under sub-clause (*c*) of Article 134(1) certifying that the case is fit one for appeal to the Supreme Court or by way of special leave under Article 136 when the certificate is refused by the High Court.[15]

(*2*) *Appeal to the High Court.*—Subject to the restrictions on appeals as mentioned in para 24.2 above, any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial may appeal to the High Court [Section 374(2)]. And in that case the judgment can be stayed suspended pending appeal.[16]

In a case where the trial is held by an Assistant Sessions Judge and during the trial the Judge is invested with the powers of the Additional Sessions Judge or of the Sessions Judge, a question might arise as to whether an appeal from an order of conviction in such a trial shall lie to the High Court. Courts are not unanimous on this point. In a case where the Assistant Sessions Judge, after he had recorded the evidence in court and heard the arguments but before he had written and delivered the judgment was invested with the powers of an Additional Sessions Judge, the Allahabad High Court held that an appeal from conviction in the case would lie to the Sessions Judge and not to the High Court as the accused was convicted "on a trial held by" an Assistant Sessions Judge and not by an Additional Sessions Judge. The fact that the Assistant Sessions Judge had become the Additional Sessions Judge when he wrote and delivered the judgment would not affect that position.[17]

In a case tried and acquitted by the magistrates' court on appeal by the State, the High Court recorded conviction and sent the case to the trial court for awarding sentence. The accused's appeal of sentence by the trial court, to the Sessions Court was held not maintainable as the 'conviction part' was non-appealable to the Session Court.[18]

(*3*) *Appeal to the court of session.*—Subject to the restrictions on appeals as mentioned in para 24.2, and also subject to the provisions of Section 374(2) as mentioned in para 24.3(2) above, any person,

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15. *Chandra Mohan Tiwari* v. *State of M.P.*, (1992) 2 SCC 105, 113-114: 1992 SCC (Cri) 252: 1992 Cri LJ 1091.
16. *V. Sundararamireddi* v. *State*, 1990 Cri LJ 167 (All); *S.M. Malik* v. *State*, 1990 Cri LJ 1919 (Del).
17. *Bakshi Ram* v. *Emperor*, AIR 1938 All 102: (1938) 39 Cri LJ 345.
18. *C. Gopinathan* v. *Krishnan Ayyappan*, 1991 Cri LJ 778 (Ker).

(*a*) convicted on a trial by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(*b*) sentenced under Section 325[19], or

(*c*) in respect of whom an order has been made or a sentence has been passed under Section 360 by any magistrate[20],

may appeal to the court of session [Section 374(3)].

(*4*) *Special right of appeal in certain cases.*—Notwithstanding anything contained in this chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal [Section 380].

24.4. Appeal by Government against sentence.—Before Section 377 dealing with such appeals was enacted, it was considered somewhat unsatisfactory to invoke the revisional powers of the High Court for correcting any error in sentencing. Considering the frequent occurrence of inadequate sentences, there seemed no reason why the State Government should not be able to appeal against an inadequate sentence.[21] Section 377 therefore provides as follows:

377. Appeal by the State Government against sentence.—(1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present [an appeal against the sentence on the ground of its inadequacy—

(*a*) to the Court of Session, if the sentence is passed by the Magistrate; and

(*b*) to the High Court, if the sentence is passed by any other Court.]

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may [also] direct the Public Prosecutor to present [an appeal against the sentence on the ground of its inadequacy—

(*a*) to the Court of Session, if the sentence is passed by the Magistrate; and

(*b*) to the High Court, if the sentence is passed by any other Court;].

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, [the Court of Session or, as the case may be], the High Court

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19. For the text of S. 325, see *supra* para 14.3(*a*).
20. For the text of S. 360, see *supra* para 23.5(*a*).
21. *See* 41st Report, p. 264, para 31.21.

shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

Earlier an appeal for enhancement of sentence on the ground of its inadequacy could only be entertained by the High Court. However, as per the present scheme of Section 377 an appeal on the ground of inadequacy of sentence can also be entertained by the court of sessions in certain circumstances. An appeal for enhancement of a sentence passed by a Magistrate would now lie to the sessions court. This will not only make it easier for the administration to prefer appeals against unduly lenient sentences by Magistrates but will also deter the latter from passing sentences that are grossly inadequate.

The right to appeal against inadequacy of the sentence has been given only to the state and not to the complainant or any other person. However that does not mean that the complainant or any other person cannot move the High Court (or court of session) in revision for this purpose. The High Court or the court of session in an appropriate case may, in exercise of its revisional jurisdiction, decide to act *suo motu* and enhance the sentence.[22] The provisions under Sections 399[23] and 401[24] dealing with the respective revisional powers of the court of session and of the High Court when read with Section 386(*c*)(*iii*) [25] are clearly supplemental to those under Section 377. The effect of reading Sections 377, 386 and 401 may however be noted. While in the exercise of the revisional jurisdiction the High Court or the court of session is competent to enhance the sentence, the accused has to be given an opportunity of being heard not only against the enhancement of the sentence but also against the conviction itself.[26]

In a case where both the appeal and a petition for enhancement of sentence were heard by the High Court it was ruled that there was no need to hear the appellant as he could be permitted to lead evidence while hearing

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22. *Nadir Khan* v. *State (Delhi Admn.)*, (1975) 2 SCC 406: 1975 SCC (Cri) 622, 624: 1976 Cri LJ 1721, 1722; *Bachan Singh* v. *State of Punjab*, (1979) 4 SCC 754: 1980 SCC (Cri) 174: 1980 Cri LJ 211; *Food Inspector, Mangalore Municipality* v. *K.S. Raphael*, 1981 Cri LJ 1149 (Kant); *Prabhudal Chhaganlal* v. *Babubhai Virabhai Miseria*, 1977 Cri LJ 1666 (Guj); *Eknath Shankarrao Mukkawar* v. *State of Maharashtra*, (1977) 3 SCC 25: 1977 SCC (Cri) 410, 413: 1977 Cri LJ 964; *State* v. *Babaji Sahoo*, 1977 Cri LJ 1591 (Ori).
23. For the text of S. 399 see *infra* para 25.6.
24. For the text of S. 401 see *infra* para 25.8.
25. For S. 386(*c*)(*iii*) see *infra* para 24.12(4).
26. *Food Inspector, Mangalore Municipality* v. *K.S. Raphael*, 1981 Cri LJ 1149, 1154 (Kant); see also *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: 1955 Cri LJ 1410.

the appeal. Moreover, the court noted, the appellant have had opportunity of being heard under Section 235(2) at the time of conviction.[27]

While the accused in an appeal under Section 377 can show that he is innocent of the offence, the prosecution is not entitled to show that he is guilty of a graver offence and on that basis the sentence should be enhanced. The prosecution will only be able to urge that the sentence is inadequate on the charge as found or even on an altered less grave charge.[28]

In a case where the conviction is recorded by the trial court but instead of awarding sentence of imprisonment the convict is released on probation under the provisions of the relevant special law then it is a case where no sentence at all has been awarded and as such the provisions of Section 377(1) are not attracted.[29]

The High Court or the court of session, while exercising the power of enhancing the sentence passed by the trial court must counter by clear ratiocination the reasons given by the trial court in passing the sentence.[30]

24.5. Appeal against the order of acquittal.—In this connection Section 378 provides as follows:

378. Appeal in case of acquittal.—(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

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27. *Sirajkhan Buddin Khan* v. *State of Gujarat*, 1994 Cri LJ 1502 (Guj).
28. *Eknath Shankarrao Mukkawar* v. *State of Maharashtra*, (1977) 3 SCC 25: 1977 SCC (Cri) 410, 416: 1977 Cri LJ 964.
29. *State of U.P.* v. *Nand Kishore Misra*, 1991 Supp (2) SCC 473: 1991 Cri LJ 456.
30. *Lingala Vijay Kumar* v. *Public Prosecutor*, (1978) 4 SCC 196: 1978 SCC (Cri) 579, 583: 1978 Cri LJ 1527.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

Appeal against an order of acquittal is an extraordinary remedy. Where the initial presumption of innocence in favour of the accused has been duly vindicated by a decision of a competent court, an appeal against such a decision of acquittal means putting the interests of the accused once again in serious jeopardy. Therefore the restrictions on the preferring of an appeal against acquittal as envisaged by Section 378 are intended to safeguard the interests of the accused person and to save him from personal vindictiveness. According to the first four sub-sections of Section 378, an appeal against an order of acquittal can be preferred only (*i*) by the Government, and (*ii*) in a case instituted upon complaint, by the Government as well as by the complainant. Secondly, the right of such appeal can be exercised only after obtaining the leave of the High Court. Thirdly, whether the order of acquittal is passed by any magistrate or by any Sessions Judge, and whether the offence of which the accused is acquitted is a major or a minor offence, the appeal in every case of such acquittal could be made only to the High Court. Fourthly, according to sub-section (6) an appeal by the State under sub-section (1) or sub-section (2) is barred in case the private complainant has failed to obtain special leave to appeal under sub-section (4).

Fifthly, the application for grant of leave to appeal must be filed within the time prescribed by sub-section (5); and the appeal must be filed within the period of limitation prescribed by Article 114 of the schedule of the Limitation Act, 1963.

The methodology of filing an appeal lies with the state, and the High Court has no authority or jurisdiction to issue a directive to the state to file appeals against persons acquitted.[31]

Section 378 deals with appeals in cases of acquittals. It does not come into play against an order of discharge.[32] Nor does it apply to cases where the proceedings are dropped as being found to be barred by the prescribed period of limitation or on account of lack of jurisdiction. An order of acquittal contemplates the complete exoneration of the accused of the offence with which he was charged.

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31. *Dwarka Das* v. *State of Haryana*, 2003 Cri LJ 414 (SC).
32. *Alim* v. *Taufiq*, 1982 Cri LJ 1264, 1265 (All); *Public Prosecutor, High Court of A.P.* v. *P. Subhash Chandra Reddy*, 2003 Cri LJ 4776 (AP).

In an appeal against acquittal a court has to remind itself of set of cardinal rules. They are that:

(*i*) there is a presumption of innocence in favour of the accused which has been strengthened by the acquittal of the accused by the trial court;

(*ii*) if two views are possible, a view favourable to the accused should be taken;

(*iii*) the trial judge had the advantage of looking at the demeanour of the witnesses, and

(*iv*) the accused is entitled to a reasonable benefit of doubt, a doubt which a thinking man will reasonably, honestly and consciously entertain.[33]

The court can interfere with the order of acquittal only when:

(*i*) the appreciation of evidence by the trial court is perverse or the conclusion drawn by it cannot be drawn on any view of the evidence;

(*ii*) where the application of law is improperly done;

(*iii*) where there is substantial omission to consider the evidence existing on record;

(*iv*) the view taken by the acquitting court is impermissible on the evidence on record; or

(*v*) if the order of acquittal is allowed to stand it will result in the miscarriage of justice.[34]

The appellate court should seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above questions in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusion.[35]

In the matter of preferring appeals against acquittals, appeals by the State Government or the Central Government have been treated differently from appeals by a complainant. This is obvious from the wording of sub-sections (3) and (4) of Section 378. In the case of an appeal preferred by the State Government or the Central Government under sub-section (1) or sub-section (2) of Section 378, the Code does not contemplate the making of an

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33. *State* v. *Vazir Hakki*, 2005 Cri LJ 2719 (Bom).
34. *State of Maharashtra* v. *Jagannath Kisan Mane*, 2005 Ind. Law Bom 186.
35. *Ramesh Babulal Doshi* v. *State of Gujarat*, (1996) 9 SCC 225: 1996 SCC (Cri) 972.

application for leave under sub-section (3) thereof, while in the case of an appeal by a complainant, the making of an application for grant of 'special leave' is a condition precedent for the grant of 'special leave' to a complainant. Therefore the State Government or the Central Government may, while preferring an appeal against acquittal under Section 378(1) or Section 378(2), incorporate a prayer in the memorandum of appeal for grant of leave under Section 378(3) or make a separate application for grant of leave under Section 378(3), but the making of such an application is not a condition precedent for a State appeal.[36] It is not necessary as a matter of law, that an application for leave to entertain the appeal should be lodged first and only after grant of leave by the High Court an appeal may be preferred against an order of acquittal.[37] However, while refusing leave to appeal against an order of acquittal, the High Court is required to adduce sufficient reasons for the same.[38]

Under Article 144 of the Limitation Act, in an appeal from an order of acquittal by the State, the period of limitation is ninety days from the date of the order appealed from; whereas in an appeal from an order of acquittal, in any case instituted upon complaint, the period is thirty days from the date of the grant of special leave. Thus there is a clear distinction between the two types of appeals with regard to terminus a quo under Article 114. It is, therefore, not necessary to wait until the grant of leave by the High Court to present a memorandum of appeal against acquittal at the instance of the State. Thus, an appeal can be filed by the State within ninety days from the date of the order of acquittal and a prayer may be included in that appeal for entertaining the appeal under Section 378(3). If the leave sought for is not granted by the High Court, the appeal is not entertained and stands dismissed.[39]

It may further be noted that even if the State had in its capacity as the complainant conducted the proceedings in the trial court, yet it has an independent right as the State to prefer an appeal under Section 378(1). This right of the State cannot be trammelled by the provisions contained in sub-sections (4) and (5) of Section 378. This is a right which is independent of the right given to the complainant, whether the complainant in the trial court was the State or a public servant or any other private individual. The wide amplitude of phraseology used in Section 378(1) clearly shows that the State has a right to approach the High Court to challenge an order of

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36. *State of M.P.* v. *Devadas*, (1982) 1 SCC 552: 1982 SCC (Cri) 275, 281: 1982 Cri LJ 614, 619.
37. *State of Rajasthan* v. *Ramdeen*, (1977) 2 SCC 630: 1977 SCC (Cri) 393, 396: 1977 Cri LJ 997.
38. *Suga Ram* v. *State of Rajasthan*, 2006 Cri LJ 4643; *Reema Aggarwal* v. *Anupam*, 2004 Cri LJ 892 (SC); *State of Punjab* v. *Bhag Singh*, 2004 Cri LJ 916 (SC).
39. (1977) 2 SCC 630: 1977 SCC (Cri) 393, 397.

acquittal passed in *any case* in the lower court. One restriction that is placed upon this right of appeal is that leave of the High Court under Section 378(3) has to be obtained. The other restriction is contained in Section 378(6).[40]

The power to go in appeal against an order of acquittal should ordinarily be used by the Government in such cases only where there appears to be a serious miscarriage of justice.[41] The Government can review or recall its decision under Section 378 to prefer an appeal against an order of acquittal before the appeal is actually presented in the High Court but not thereafter.[42] The provisions regarding the leave of the High Court to file an appeal against acquittal were found desirable and expedient against the somewhat arbitrary exercise of the executive power of the Government to file such appeals.[43] Under sub-section (3) the High Court has got full discretion to grant or not to grant leave to appeal against acquittal. But quite obviously this discretion is to be used judicially and not arbitrarily. Leave to appeal should not be refused without assigning reasons.[44]

According to Section 378(1), the appeal by the State against the order of acquittal is to be presented in the High Court by the Public Prosecutor upon the direction of the State Government. The object of this provision seems to be that the State should associate the Public Prosecutor in the matter of preferring an appeal against acquittal. Where there is a Public Prosecutor but the State has not associated him in preferring the appeal, the act of filing the appeal will be invalid. Section 378 is thus mandatory. Even though Section 382 allows the appeal to be presented in the form of a petition by the appellant or his lawyer, that section does not override the special requirement of Section 378 in respect of an appeal by the State. However, in a situation where it is impossible to have a Public Prosecutor for presenting an appeal on behalf of the State, it would be legitimate to invoke the maxim

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40. *State of Maharashtra* v. *Deepchand Khushalchand Jain*, 1983 Cri LJ 561, 567 (Bom); see also *Khemraj* v. *State of M.P.*, (1976) 1 SCC 385: 1976 SCC (Cri) 3, 7: 1976 Cri LJ 192.
41. *King-Emperor* v. *Ganpati*, AIR 1944 Nag 136: 1945 Cri LJ 766, 767; *Public Prosecutor* v. *Mayandi Nadar*, AIR 1933 Mad 230: 34 Cri LJ 948(1); *Deputy Legal Remembrancer* v. *Karuna Baistobi*, ILR (1894) 22 Cal 164, 170; but see *State of Orissa* v. *Nirupama Panda*, 1989 Cri LJ 621 (Ori) where the State does not appear to have followed this standard.
42. *Lal Singh* v. *State of Punjab*, 1981 Cri LJ 1069, 1077 (P&H) (FB).
43. *See* Joint Committee Report, p. xxvi.
44. *State of Maharashtra* v. *Vithal Rao Pritirao Chawan*, (1981) 4 SCC 129: 1981 SCC (Cri) 807, 808: 1982 Cri LJ 1743(1); *Reema Aggarwal* v. *Anupam*, 2004 Cri LJ 892 (SC); *State of Punjab* v. *Bhag Singh*, 2004 Cri LJ 916 (SC); *State of Haryana* v. *Ram Pal*, (2005) 3 SCC 347; *State of Punjab* v. *Bhag Singh*, (2004) 1 SCC 547; *State of M.P.* v. *Anil*, (2005) 12 SCC 213; *State of M.P.* v. *Bala*, (2005) 8 SCC 1; *State of M.P.* v. *Dayanand Dohar*, (2005) 8 SCC 12; *Suga Ram* v. *State of Rajasthan*, 2006 Cri LJ 4643.

Lex non cogit ad impossibillia which means dispensing performance of what is prescribed when performance of it is impossible.[45]

For the purposes of Section 378(1), the Public Prosecutor is a person appointed as such under Section 24(1).[46] It has been held that simply because the rules framed by the State Government under Article 165 provided that the Advocate-General shall represent the Government in the High Court in important civil and criminal proceedings, it will not give him the status and clothe him with the powers of a Public Prosecutor of the High Court as appointed under Section 24(1) of the Code.[47]

The Public Prosecutor, according to Section 378(1), is to present the appeal against acquittal only under the direction of the State Government. He has no power to suo motu file such an appeal. In the absence of any direction from the Government, the appeal filed by him would be incompetent. A proposal of the Gujarat Govt. to get the appeals against acquittals to be vetted by the District Magistrates came to be adversely commented upon by the Gujarat High Court. However, on appeal by the State, the Supreme Court ordered that a copy of the proposal for filing appeals against acquittals should be sent to the District Magistrate though it need not be necessary for the Law Deptt. to wait for their comments for filing appeals.[48] An ex-post sanction/direction granted by the Government after the expiry of limitation for appeal cannot cure the defect.[49] Because, the ex-post facto sanction if permitted would deprive the accused of a valuable right for the maintenance of the order of acquittal.

It is interesting to note that accepting the letter of the grandfather of the victim as petition an acquittal recorded by a sessions court came to be reviewed and set aside by the High Court which remanded the case to pass a fresh judgment after hearing or if need be, to hold a retrial. The Supreme Court okayed the orders of the High Court though the acquittal was challenged by the grandfather who was not the *de facto* complainant in the case.[50]

The words "any case instituted upon complaint" in sub-section (4) mean only such cases where a complaint is filed and cognizance of the offence is taken by the magistrate upon such complaint. If the magistrate after receiving the complaint refers the same to the police without taking

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45. *J.M. Almeida* v. *State*, 1980 Cri LJ 145, 150 (Goa JCC); *Supdt. & Remembrancer of Legal Affairs* v. *Prafulla Majhi*, 1977 Cri LJ 853 (Cal).
46. For S. 24(1) see *supra* para 3.6.
47. *State of Kerala* v. *Kolarveettil Krishnan*, 1982 Cri LJ 301, 302-3 (Ker).
48. *State of Gujarat* v. *Ratilal Laljibhai Tandol*, (1997) 7 SCC 227: 1997 SCC (Cri) 1046.
49. *State of Punjab* v. *Mohinder Singh*, 1983 Cri LJ 466, 469-70 (P&H).
50. *Kaptan Singh* v. *State of M.P.*, (1997) 6 SCC 185: 1997 SCC (Cri) 870.

cognizance and subsequently cognizance is taken on the police report, the case is not one "instituted upon complaint" and is not covered by sub-section (4).[51] The complainant in such a case is *de facto* complainant. Though he may be examined as witness, he will have no right to challenge the acquittal by way of appeal.[52] However, the *de facto* complainant may file an application under Section 401 of the Code for revision of the order of acquittal.[53]

Sub-section (5) prescribes a period of limitation of 60 days for making an application for grant of special leave to appeal against an order of acquittal at the instance of a complainant. In quite a few cases prosecutions are launched by means of complaints by public servants, such as prosecutions for offences under some special laws. In such cases, the administrative procedure for taking a decision in the matter takes quite a long time and in some cases such procedure is not completed within 60 days. In consequence there might be miscarriage of justice. Most of these special laws require to be enforced strictly with a view to put a stop to various types of anti-social activities and if wrong acquittals are not appealed against, there would be an adverse effect on the enforcement of such laws. It was, therefore, considered desirable to extend the period of limitation to 6 months whenever the complainant was a public servant.

An appeal from an order of acquittal in a case instituted upon a complaint must be presented within 30 days from the date of grant of special leave to appeal as provided by clause (*b*) of Article 114 of the Limitation Act.

A party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstances arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause.[54]

In a case where the accused was acquitted according to the then settled law, but subsequent to the order of acquittal the settled law was altered and unsettled by the view taken by the Supreme Court, the complainant was not granted special leave to appeal from the order of acquittal. Because unsettling

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51. *Sk. Osman Gani* v. *Baramdeo Singh*, AIR 1959 Cal 145, 146-147: 1959 Cri LJ 311; *Kartar Singh* v. *Bajrangi Lall*, AIR 1964 Pat 61, 62: (1964) 1 Cri LJ 213; *K. Damodaran* v. *V.K. Sippi*, AIR 1960 Ker 389: 1960 Cri LJ 1600; *Huchappa* v. *Venkataswami*, AIR 1960 Mys 172: 1960 Cri LJ 964; see also *Hasimuddin Mondal* v. *Golam Mahebub*, 1988 Cri LJ 1900 (Cal).
52. *Ahamadkutty* v. *Johnson*, 1989 Cri LJ 2462 (Ker).
53. *Annapurna (Smt)* v. *State*, 2003 Cri LJ 2665 (Kant).
54. *Ajit Singh Thakur Singh* v. *State of Gujarat*, (1981) 1 SCC 495: 1981 SCC (Cri) 184, 186: 1981 Cri LJ 293, 295.

the settled cases and converting acquittals into convictions was not considered conducive to justice.[55]

It has been observed that if a convict's appeal is out of time it is the practice of the High Court to condone the delay as no right could be said to vest in the State to have the conviction of an innocent person upheld, but if the State itself is negligent in the presentation of an appeal against acquittal a very clear right comes to vest in the accused person and he is entitled to claim that, save in exceptional circumstances, delay in filing the appeal should not be condoned.[56]

It has been opined that when the State has not appealed against acquittal, the complainant could invoke revisional jurisdiction of the Sessions Court.[57]

24.6. Petition of appeal and its presentation.—(1) Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against [Section 382].

(2) If the appellant is in jail he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper appellate court [Section 383].

The appeals presented to jail authorities under Section 383 are usually called "jail appeals".

It is obvious that the right vested in the appellant is to present one appeal although there are different methods of presenting it, and strictly speaking, if one method is availed of and one appeal either under Section 382, or Section 383 is presented, no other appeal can be lodged.[58] In practice, however, it appears that frequently both appeals are presented and are dealt with as two appeals about the same matter. Thus, an appellant in jail sends an appeal through the jail superintendent and later a pleader instructed on his behalf presents another appeal against the same order. No practical difficulty arises if, as is normally the case, both the appeals are dealt with at the same time. Sometimes, however, through oversight, one appeal is disposed of and then the other appeal comes up for disposal causing considerable embarrassment to

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55. *Municipal Corpn. of Delhi* v. *Madan Lal*, 1979 Cri LJ 426, 428 (Del).
56. *State* v. *Dittu Ram Pritam Dass*, AIR 1955 Punj 164: 1955 Cri LJ 1204; *State* v. *A.M. Pagarkar*, 1975 Cri LJ 71 (Goa JCC).
57. *Niranjan Kumar Das* v. *Ranadhir Roy*, 1990 Cri LJ 683 (Gau); *Krishnamoorty, In re*, 1984 Cri LJ 243 (DB) (Mad).
58. *See* 41st Report, p. 265, para 31.24.

the appellate court.[59] In order to meet such a situation fairly, specific provisions have been made in Section 384 which will be discussed later in para 24.8.

Where several persons are convicted at one trial, all of them or some of them can present one joint appeal.[60]

The rule contained in Section 382 is a technical rule, it requires an aggrieved person filing an appeal to attach a copy of the judgment appealed against. The purpose of this rule is to give the appellate court an initial idea of what the case is about at the time of passing interim orders. The provision should not be read as creating a disability against a person from filing an appeal.[61]

Though there is no provision in the Code which requires that the petition of appeal should specify the grounds on which the appeal is based, yet the memorandum of appeal should contain a succinct statement of the grounds on which the appellant proposes to support the appeal.[62]

24.7. Hearing of appeals in Court of Session.—For proper distribution of the appellate work in the court of session, Section 381 provides as follows:

381. Appeal to Court of Session how heard.—(1) Subject to the provisions of sub-section (2), an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:

Provided that an appeal against a conviction on a trial held by a Magistrate of the second class may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate.

(2) An Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate shall hear only such appeals as the Sessions Judge of the division may, by general or special order, make over to him or as the High Court may, by special order, direct him to hear.

Sub-section (2) of Section 381 restricts the jurisdiction conferred on Additional Sessions Judge, Assistant Sessions Judge or Chief Judicial Magistrate; it does not empower the Additional Sessions Judge or the Assistant Sessions Judge to receive appeals direct from parties and to admit them and take them on file.[63]

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59. *See* 41st Report p. 265, para 31.25.
60. *Lalu Jela* v. *State of Gujarat*, AIR 1962 Guj 125: (1962) 1 Cri LJ 714 (FB); *Madan Bagdi* v. *State*, AIR 1967 Cal 528, 529. *See* for joint appeal against acquittal of several persons, *State of Gujarat* v. *Ramprakash P. Puri*, (1969) 3 SCC 156, 158-59: 1970 SCC (Cri) 29.
61. *Mukand Lal* v. *State*, 1979 Cri LJ 105, 106 (Del).
62. *Kapil Deo Shukla* v. *State of U.P.*, AIR 1958 SC 121: 1958 Cri LJ 262.
63. *Pasupulati Nanjappa, In re*, AIR 1961 AP 471: (1961) 2 Cri LJ 611 (FB); *Kamleshwar Singh* v. *Dharmdeo Singh*, AIR 1957 Pat 375: 1957 Cri LJ 879 (FB).

The reasonable interpretation of Section 381(2) appears to be that an Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate is competent to hear only appeals properly filed under Section 374(3), entertained by the Sessions Judge and thereafter transferred to him.[64]

24.8. Summary dismissal of appeals.—(*1*) *Petition of appeal and copy of judgment to be examined.*—If upon examining the petition of appeal and copy of the judgment received under Section 382 or Section 383 the appellate court considers that there is no sufficient ground for interfering it may dismiss the appeal summarily [Section 384(1)].

Dismissing the appeal summarily means dismissing it, "in an informal manner and without the delay of formal proceeding".[65] Of course the informal dismissal of the appeal can be thought of only after examining the petition of appeal and the copy of judgment accompanying the petition of appeal. There cannot be partial summary dismissal of appeal, and therefore an appeal cannot be admitted only on ground of sentence while summarily dismissing it as regards conviction.[66] The summary dismissal of appeal under Section 384 is as much an adjudication as an order of dismissal after a full hearing so far as the accused is concerned.[67] The power to dismiss the appeal summarily should be exercised judicially and with great care. If arguable and substantial points are raised the appellate court should not dismiss the appeal summarily.[68] It is true that the appellate court has the undoubted power to dismiss an appeal summarily. But it must be realised that in a criminal case the accused has only one right of appeal and that should not be denied to him where arguable questions of fact are involved or a prima facie case for investigation is made out. The appellate court should be careful in exercising its discretion in dismissing appeals summarily and should not do so as a matter of routine.[69]

In *Sita Ram* v. *State of U.P.*[70], the Supreme Court felt that Section 384 dealing with summary dismissal of an appeal, even without the case-record

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64. *Kochummihi Chettiar* v. *State of Kerala*, 1977 Cri LJ 1872, 1873 (Ker).
65. *Rash Behari Das* v. *Balgopal Singh*, ILR (1894) 21 Cal 92, 96.
66. *Rabari Ghela Jadav* v. *State of Bombay*, AIR 1960 SC 748: 1960 Cri LJ 1156; *Sudhir Kumar* v. *Emperor*, AIR 1942 Pat 46: 43 Cri LJ 27; *Emperor* v. *Dahu Raut*, AIR 1935 PC 89: 36 Cri LJ 836; *Nafar Sheikh* v. *Emperor*, AIR 1914 Cal 276: 1914 Cri LJ 485.
67. *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: 1955 Cri LJ 1410.
68. *Dnyanu Hariba Mali* v. *State of Maharashtra*, (1970) 3 SCC 7: 1970 SCC (Cri) 357: 1970 Cri LJ 893; *Govinda Kadtuji Kadam* v. *State of Maharashtra*, (1970) 1 SCC 469: 1970 SCC (Cri) 204: 1970 Cri LJ 995; *Siddanna Apparao Patil* v. *State of Maharashtra*, (1970) 1 SCC 547: 1970 SCC (Cri) 224: 1970 Cri LJ 891; *Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855: 1971 SCC (Cri) 353: 1971 Cri LJ 1177.
69. *Yasin Gulam Haider* v. *State of Maharashtra*, (1979) 4 SCC 600: 1980 SCC (Cri) 145, 147: 1980 Cri LJ 568, 570.
70. (1979) 2 SCC 656: 1979 SCC (Cri) 576: 1979 Cri LJ 659.

and without the necessity of giving reasons for dismissal if the appellate court happened to be the High Court or the Supreme Court, was rather arbitrary in action and too broad in its sweep. The Court held that the section shall be restricted by certain criteria in its application. The section in action shall not mean that all appeals falling within its fold shall, in the ordinary course, be disposed of routinely on a preliminary hearing. The rule, in case of appeals under Article 134(1)(*a*) & (*b*) of the Constitution or under Section 379 of the Code[71], is issuing *notice* to the State, calling for the *records*, and *recording of reasons*, for dismissal of appeal. In exceptional circumstances, an appeal may be summarily dismissed after preliminary hearing, and looking into the materials placed by the appellant before the courts and after recording brief grounds for dismissal. In cases of real doubt the benefit of doubt is to go to the appellant and notice is to go to the adversary—even if the chances of allowance of the appeal may not be bright.

However later the Supreme Court has held that *Sita Ram case* (supra) is no authority as to the scope of Section 384. Because in that case as the question of validity of Section 384 was neither raised nor argued, a discussion by the Supreme Court after "pondering over the issue in depth" would not be a precedent binding on the courts.[72]

(2) *Calling for the case-record.*—Before dismissing an appeal summarily under this Section 384, the court may *call* for the record of the case [Section 384(2)].

(*3*) *Reasonable opportunity of being heard.*—No appeal presented under Section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same. [proviso (*a*) to sub-section (1) of Section 384]

What would amount to a reasonable opportunity depends upon the facts and circumstances of each case. Appeal under Section 382 has been mentioned in earlier para 24.6.

(*4*) *Special provisions regarding jail appeals.*—No appeal presented under Section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the appellate court considers that the appeal is frivolous or that the production of the accused in custody before the court would involve such inconvenience as would be disproportionate in the circumstances of the case [proviso (*b*) to sub-section (1) of Section 384]. Further no appeal under

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71. For S. 379, see *supra* para 24.3(*b*).
72. *Rajput Ruda Meha* v. *State of Gujarat*, (1980) 1 SCC 677: 1980 SCC (Cri) 317, 320: 1980 Cri LJ 1246.

Section 383 shall be dismissed summarily until the period for preferring such appeal has expired [proviso (*c*) to sub-section (1) of Section 384].

Appeals under Section 383 which are generally called "jail appeals" have already been described in para 24.6. It has been observed that except perhaps in the High Courts, "jail appeals" are not considered with particular care, and in many cases, the grounds of appeal drafted in jail do not attract sufficient attention and even if there may be any point in the appeal, it is liable to be dismissed.[73] The proviso (*b*) to sub-section (1) mentioned above would ensure that the "jail appeals" are not summarily dismissed without giving the appellant a reasonable opportunity of being heard unless the appellate court considers that the appeal is frivolous or the production of the accused in the court would involve inconvenience disproportionate in the circumstances of the case.[74] Further, proviso (*c*) to sub-section (1) mentioned above will ensure that an appellant wishing to avail of legal assistance will have presented an appeal under Section 382 before his appeal, if any, presented under Section 383 comes up for disposal. It has also been provided by sub-section (4) of Section 384 that, if in spite of this, a jail appeal happens to be dismissed summarily, that would not debar the court from considering an appeal under Section 382 on the merits, provided such appeal is otherwise duly presented and the court is satisfied that the interests of justice require that it should be heard.[75]

(*5*) *Recording of reasons.*—Where the appellate court dismissing an appeal under this section (*i.e.*, Section 384) is a court of session or of the Chief Judicial Magistrate, it shall record its reasons for doing so [sub-section (3) of Section 384].

The orders of summary dismissals of appeals as passed by the appellate courts mentioned above are liable to be revised by the High Court; therefore it would be very helpful if their reasons existed on record.[76] Where the appellate court dismissing an appeal summarily is the High Court, the above provision as such is not applicable; however as an appeal to the Supreme Court against such an order of High Court is possible under the provisions of the Constitution, it is equally necessary that the High Court records its reasons while dismissing any appeal summarily. Time and again, the Supreme Court has pointed out that an appeal which raises arguable questions, either factual or legal, should not be summarily dismissed

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73. *See* 41st Report, p. 265, para 31.26.
74. *See* Joint Committee Report, p. xxvii.
75. *See* 41st Report, p. 265-266, para 31.27.
76. *Ibid.*; p. 266, para 31.28.

without recording a reasoned order.[77] It has been observed by the Supreme Court:

A summary dismissal of the appeal will... be legal if the appellate court considers that there is no sufficient ground for interference. But even in such circumstances it has been held that a summary decision is a judicial decision which vitally affects the convicted appellant and in a fit case, it is also open to be challenged on an appeal before this court. Though summary rejection, without giving any reasons, is not violative of any statutory provisions, such a manner of disposal removes every opportunity for detection of errors in the order. It has been further held that when an appeal in the High Court raises a serious and substantial point, which is prima facie arguable, it is improper for an appellate court to dismiss the appeal summarily without giving some indications of its view on the point. The interests of justice and fair play require that in such cases an indication must be given by the appellate court of its views on the point argued before it.[78]

The Supreme Court has also pointed out[79] another valid reason for its insistence on a reasoned order of the High Courts disposing appeals:

"It may be thought that such orders are passed by this Court and therefore there is no reason why the High Courts should not do the same. We would like to point out respectfully that the orders passed by this court are final and no appeal lies against them. The Supreme Court is the final court in the hierarchy of our courts. Besides, orders without a reasoned judgment are passed by this court very rarely under

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77. *Sampat Tatyada Shinde* v. *State of Maharashtra*, (1974) 4 SCC 213: 1974 SCC (Cri) 382, 386: 1974 Cri LJ 674, 677; *Sk. Mohd. Ali* v. *State of Maharashtra*, (1972) 2 SCC 784: 1973 SCC (Cri) 111: 1973 Cri LJ 166; *Mushtak Hussein* v. *State of Bombay*, 1953 Cri LJ 1127: AIR 1953 SC 282; *Dattu Genu Gaikwad* v. *State of Maharashtra*, (1974) 3 SCC 678: 1974 SCC Cri 208: 1974 Cri LJ 446; *K.V. Suroshe* v. *State of Maharashtra*, (1974) 3 SCC 404: 1973 SCC (Cri) 969: 1974 Cri LJ 330; *Dhondiba* v. *State of Maharashtra*, (1976) 1 SCC 162: 1975 SCC (Cri) 793: 1976 Cri LJ 856; *Babboo* v. *State of M.P.*, (1979) 4 SCC 74: 1979 SCC (Cri) 743, 748: 1979 Cri LJ 908, 912; *State of Punjab* v. *Jagdev Singh Talwandi*, (1984) 1 SCC 596: 1984 SCC (Cri) 135: 1984 Cri LJ 177; *Raghunath Laxman Makadwada* v. *State of Maharashtra*, (1986) 2 SCC 90: 1986 SCC (Cri) 108: 1986 Cri LJ 858; *Jawahar Lal Singh* v. *Naresh Singh*, (1987) 2 SCC 222: 1987 SCC (Cri) 347; *Arun Ram Chandra Swant* v. *State of Maharashtra*, 1989 Supp (2) SCC 410; *Ram Karan* v. *State of Rajasthan*, 1990 Supp SCC 604: 1991 SCC (Cri) 162; *State (Delhi Admn.,)* v. *Shiv Kumar*, 1990 Supp SCC 673: 1991 SCC (Cri) 158; *State of U.P.* v. *Jagdish Singh*, 1990 Supp SCC 150: 1990 SCC (Cri) 636.

78. *Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855: 1971 SCC (Cri) 353, 359-60: 1971 Cri LJ 1177; see also *Govinda Kadtuji Kadam* v. *State of Maharashtra*, (1970) 1 SCC 469: 1970 SCC (Cri) 204: 1970 Cri LJ 995; *Challappa Ramaswami* v. *State of Maharashtra*, (1970) 2 SCC 426: 1970 SCC (Cri) 472: 1971 Cri LJ 19; *Dagadu* v. *State of Maharashtra*, (1981) 2 SCC 575: 1981 SCC (Cri) 564: 1981 Cri LJ 724; *Sita Ram* v. *State of U.P.*, (1979) 2 SCC 656: 1979 SCC (Cri) 576: 1979 Cri LJ 659.

79. *State of Punjab* v. *Jagdev Singh Talwandi*, (1984) 1 SCC 596: 1984 SCC (Cri) 135: 1984 Cri LJ 177.

exceptional circumstances. Orders passed by the High Court are subject to the appellate jurisdiction of this court under Article 136... and other provisions of the concerned states".[80]

The Supreme Court therefore concluded that the High Courts should not dispose of appeals by bald orders.[81]

(*6*) *Summary dismissal of jail appeal is no bar to the hearing of regular appeal.*—Where an appeal presented under Section 383 (*i.e.* a jail appeal) has been dismissed summarily under this section and the appellate court finds that another petition of appeal duly presented under Section 382 (*i.e.* a regular appeal) on behalf of the same appellant has not been considered by it, that court may, notwithstanding anything contained in Section 393, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law [sub-section (4) of Section 384].

Section 393 referred to in the above provision deals with the finality of judgments and orders and would be discussed later in para 24.15.

(*7*) *Non-appearance of the appellant.*—It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. However, a criminal appeal cannot be dismissed on the ground that no one appeared to support it.[82] The appellate court must consider whether there is sufficient ground for interfering which implies judicial consideration on the merits.[83] It has also been pointed out that the right to dismiss criminal appeals for default for appearance and then to restore the same, are not at all available to the criminal appellate courts subordinate to the High Court, which are solely governed by Section 386 and are devoid of all inherent powers.[84]

As regards the disposal of appeals when the appellant or his counsel is not present it has been clarified by the Supreme Court that the appellate

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80. (1984) 1 SCC 596, 611: 1984 SCC (Cri) 135.
81. *State of U.P.* v. *Haripal Singh*, (1998) 8 SCC 747: 1999 SCC (Cri) 92; *Gurshinder Singh* v. *Joga Singh*, 1999 SCC (Cri) 1311.
82. *Bani Singh* v. *State of U.P.*, (1996) 4 SCC 720: AIR 1996 SC 2439; *Man Singh* v. *State of U.P.*, 2003 Cri LJ 3927 (All); *State* v. *Ram Gopal*, 2006 Cri LJ 2805 (Del).
83. *Trimbak Balwant Vaidya* v. *Emperor*, ILR (1926) 50 Bom, 673; *Gulab Das* v. *Emperor*, AIR 1935 Pat 460: 37 Cri LJ 93; *Ram Chandar* v. *Emperor*, AIR 1923 All 175: 24 Cri LJ 662; *Biswanath* v. *Haripada*, AIR 1959 Cal 443: 1959 Cri LJ 831; see also *Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855: 1971 SCC (Cri) 353: 1971 Cri LJ 1177: AIR 1971 SC 1606; *Ram Naresh Yadav* v. *State of Bihar*, AIR 1987 SC 1500: 1987 Cri LJ 1856; *Siaram Yadav* v. *State of Bihar*, 1989 Cri LJ 1602 (Pat); *Nathu Ram* v. *State of U.P.*, 1990 Cri LJ 452 (All); *M.D. Farooq* v. *State of Karnataka*, 1990 Cri LJ 286 (Kant).
84. *Radheshyam Soni* v. *State*, 1991 Cri LJ 2926 (Cal); *see* also discussions in *Kishan Singh* v. *State of U.P.*, (1996) 9 SCC 372: 1996 SCC (Cri) 1010.

court has ample powers to dispose of them on merits.[85] However, if the appellant happens to be in jail, the appellate court should, adjourn and fix another date for hearing.[86]

In *Ram Naresh Yadav* v. *State of Bihar*[87], the Supreme Court had earlier held that the appellate court has no right to hear the appeal on merits in the absence of the appellant or his counsel. This view was overturned by the Supreme Court in *Bani Singh* v. *State of U.P.*[88], wherein0 the Supreme Court reaffirmed that the appellate court is entitled to dispose of appeals on merits in the absence of appellant or his counsel.

(*8*) *No power to allow withdrawal of appeal.*—Once an appeal has been entertained by the appellate court, the appellate court has no power to allow it to be withdrawn. It is the duty of the appellate court to decide the appeal irrespective of the fact that the appellant either does not choose to prosecute it or is unable to prosecute it for any reason.[89] An appeal can abate only on the death of the accused and not otherwise.[90]

24.9. Procedure for hearing appeals not dismissed summarily.—Where the petition of appeal has not been summarily dismissed and the appeal is "admitted", Section 385 prescribes the further steps to be taken and the procedure to be followed for the hearing of the appeal. Section 385 reads as follows:

385. Procedure for hearing appeals not dismissed summarily.—(1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given—

(*i*) to the appellant or his pleader;

(*ii*) to such officer as the State Government may appoint in this behalf;

(*iii*) if the appeal is from a judgment of conviction in a case instituted upon complaint, to the complainant;

(*iv*) if the appeal is under Section 377, or Section 378, to the accused,

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85. *Bani Singh* v. *State of U.P.*, (1996) 4 SCC 720: 1996 SCC (Cri) 848; *Kishan Singh* v. *State of U.P.*, (1996) 9 SCC 372: 1996 SCC (Cri) 1010; *Mewa Lal* v. *State of U.P.*, 2003 Cri LJ 675 (All).

86. *Bani Singh* v. *State of U.P.*, (1996) 4 SCC 720: AIR 1996 SC 2439; *Mewa Lal* v. *State of U.P.*, (2003) Cri LJ 675 (All).

87. AIR 1987 SC 1500.

88. (1996) 4 SCC 720: 1996 SCC (Cri) 848.

89. *Khedu Mohton* v. *State of Bihar*, (1970) 2 SCC 450: 1970 SCC (Cri) 479, 482: 1971 Cri LJ 20; *Sudhindra Nath Dutt* v. *State*, AIR 1957 Cal 677: 1957 Cri LJ 1245; *Biswanath* v. *Haripada*, AIR 1959 Cal 443: 1959 Cri LJ 831; see also *Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855: 1971 SCC (Cri) 353: AIR 1971 SC 1606; *Ram Naresh Yadav* v. *State of Bihar*, AIR 1987 SC 1500: 1987 Cri LJ 1856; *Siaram Yadav* v. *State of Bihar*, 1989 Cri LJ 1602 (Pat); *Nathu Ram* v. *State of U.P.*, 1990 Cri LJ 452 (All). But see *Ajgor Ali* v. *State of Assam*, 1988 Cri LJ 1486 (Gau) wherein the judge chose to dismiss the appeal.

90. *Khedu Mohton* v. *State of Bihar*, (1970) 2 SCC 450: 1970 SCC (Cri) 479, 482: 1971 Cri LJ 20.

and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

(2) The Appellate Court shall then send for the record of the case, if such record is not already available in that Court, and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.

(3) Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not, except with the leave of the Court, urge or be heard in support of any other ground.

Non-compliance with Section 385 may amount to violation of principles of natural justice.[91]

In case the appeal is not dismissed summarily, Section 385(2) requires the appellate court to send for the record of the case. However the rigour of rule has been taken away by the proviso to Section 385(2) in a certain situation mentioned therein. Therefore if the appellant himself says that the appeal should be allowed on the findings recorded by the Sessions Judge and the respondent has not raised any objection to this, the non-summoning of the record cannot be considered as fatal to the case. Moreover this irregularity will be curable under Section 465.[92]

In certain cases the Courts may have to ensure production of accused. In *Mahendra Harjivan Luhar* v. *State of Gujarat*[93], the elder brother of the accused was produced in the place of the real accused in the appeal against his acquittal. It was only at the stage of imposing punishment did he represent that he was not the real accused. It was doubted whether it could happen without the collusion of police. The Court desired to have investigation and in order to avoid recurrence issued a number of instructions one of which runs thus:—

> "In all acquittal appeals also whenever notices and warrants are issued by the High Court, the photographs and marks of identification should be cross-checked with the accused and when the notices are returned duly served and the warrant executed, they should accompany a certificate by the concerned court forwarding them to the effect that the accused has been duly served after verifying his identity, name and address."

24.10. Powers of appellate court to grant bail.—Sections 389 and 390 deal with suspension of sentence pending the appeal, release of appellant on bail, arrest of the accused in appeal from acquittal and his

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91. *Arun Bhusan Chakravarty* v. *State of Assam*, 1990 Cri LJ 531 (Gau).
92. *Hanumant Dass* v. *Vinay Kumar*, 1982 SCC (Cri) 379 (2), 385: (1982) 2 SCC 177: 1982 Cri LJ 977, 981.
93. 1999 Cri LJ 3025 (Guj).

release on bail etc. These sections have already been discussed in paras 12.7, 12.8, and 12.10, and the same need not be repeated here.

24.11. Power of the appellate court to obtain further evidence.— Section 391 provides as follows—

391. Appellate Court may take further evidence or direct it to be taken.— (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

Chapter XXIII of the Code referred to in Section 391 deals with 'Evidence in Inquiries and Trials'. The sections contained in the said chapter, namely, Sections 272 to 299, have already been discussed in earlier chapters.

The object of the section evidently is to ensure that justice is done between the prosecutor and the person prosecuted. Of course additional evidence cannot be tendered at the appellate stage as of right and the appellate court has to exercise discretion vesting in it to permit additional evidence on sound judicial principles. Surely, it is not an arbitrary discretion as is manifest by the provision that it "shall record its reasons".[94]

The power to take additional evidence should be exercised sparingly and only in suitable cases. Since a wide discretion is conferred on appellate courts, the limits of such courts' jurisdiction must obviously be dictated by the exigency of the situation, and fair play and good sense appear to be the only safe guides. However, once such action is justified there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must of course, not be received in such a way as to cause prejudice to the accused, as for example, it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made, if the prosecution has had a fair opportunity and has not availed of it, unless the requirements of justice dictate otherwise.[95] The section is not meant to remedy the negligence or

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94. *Tokh Ram* v. *State*, 1982 Cri LJ 1966, 1969 (Del).

95. *Rajeswar Prasad Misra* v. *State of W.B.*, AIR 1965 SC 1887: (1965) 2 Cri LJ 817, 821.

filling the latches left in the prosecution case or for allowing the prosecution to indulge in fishing of evidence.[1] It is also not meant to make out a case different from the one already on record.[2] Section 391 does not authorize the appellate judge to set aside the conviction and sentence and remand the case to the trial judge for recording evidence.[3]

In a case involving smuggling of gold, the prosecution under Section 391 prayed for formally proving the mint master's report to the effect that the gold was of specified purity[4]. The High Court rejected this prayer. On appeal, the Supreme Court ruled that societal interest should be adequately cared for and that the white collar offenders should be strictly dealt with. The Court's observations are instructive:

> "Apart from the fact that the alleged lacuna was a technical lacuna in the sense that while the opinion of the Mint Master had admittedly been placed on record it had not been formally proved. The report completely supported the case of the prosecution that the gold was of the specified purity. To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender."[5]

The power to take additional evidence under Section 391 should not be used as a disguise for a retrial nor should it be used to direct fresh disposal of the case by the trial court.[6]

24.12. Powers of the appellate court in disposing of appeals.— Section 386 confers adequate powers on the appellate court for the proper disposal of different kinds of appeals. According to that section these powers are to be exercised only after satisfying two essential conditions:

(*a*) Before deciding to exercise any of the powers hereinafter mentioned the court must peruse the record of the case. As has already been mentioned in para 24.9, Section 385(2) requires that after the admission of any appeal the appellate court shall send for the record of the case if such record is not already available in that court. This requirement is necessary to be complied with to enable the court to adjudicate upon the correctness or otherwise of the order or judgment appealed against not only with reference to the judgment but also with reference to the records which will be the

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1. *Gopi Chand* v. *State*, 1969 Cri LJ 1153 (All); *Subramaniam Gounder, In re*, 1976 Cri LJ 1200 (Mad); see also *Shiva Balak Rai* v. *State of Bihar*, 1986 Cri LJ 1727 (Pat).
2. *Thomas* v. *State of Kerala*, 1999 Cri LJ 1297.
3. *T. Vennila* v. *Thangavel*, 2003 Cri LJ 4049 (Mad).
4. *State of Gujarat* v. *Mohanlal Jitamalji Porwal*, (1987) 2 SCC 364: 1987 SCC (Cri) 364: 1987 Cri LJ 1061.
5. (1987) 2 SCC 364 at 370: 1987 SCC (Cri) 364.
6. *Govindan* v. *Food Inspector*, 1982 Cri LJ 784, 786 (Ker).

basis on which the judgment is founded. It has been observed that there must be a clear indication in the judgment or order of the appellate court that it has applied its judicial mind to the particular appeal with which it was dealing. Such an indication will be available when the appellate court has considered the material on record, which means not only the judgment and petition of appeal, but also the other relevant materials.[7]

Where the record has been lost or destroyed and it is not possible to reconstruct it, the appellate court cannot legally affirm the conviction of the appellant since perusal of the record of the case is one of the essential elements of the hearing of the appeal. The appellant has a right to satisfy the appellate court that the material on record did not justify his conviction and that right cannot be denied to him. Therefore if the time lag between the date of the incident of the alleged crime and the date on which the appeal comes up for hearing is short, the proper course would be to direct retrial of the case. Where, however, such time lag is too wide, it would neither be just nor proper to direct retrial of the case, more so when even the copies of FIR and statements of witnesses under Section 161 and other relevant papers have been weeded out or otherwise not available. In such circumstances, the High Court may prefer to set aside the order of conviction and to acquit the accused.[8]

(*b*) The appellate court must hear the appellant or his pleader, if he appears, and the public prosecutor, if he appears, and in case of an appeal by the State Government against sentence under Section 377, or of an appeal in case of acquittal under Section 378, the accused, if he appears.

It is a basic rule of natural justice that before a case is decided by the court, the parties to the case must be given a reasonable opportunity of being heard. It may be noted that if the appeal is from a judgment of conviction in a case instituted upon a complaint, then according to Section 385(1)(*iii*), the appellate court admitting the appeal is required to give notice to the complainant of the time and place at which such appeal shall be heard.[9] However in such a case, though it is obligatory to hear the Public Prosecutor on behalf of the State, Section 386 does not specifically require the appellate court to hear

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7. *Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855: 1971 SCC (Cri) 353, 361: 1971 Cri LJ 1177.
8. *Sita Ram* v. *State*, 1981 Cri LJ 65, 66-67 (All); however, see *Sadhu* v. *State*, 1981 Cri LJ 67 (All) where the High Court ordered retrial even though eleven years had elapsed since the occurrence of the incident and the record was burnt and hence not available.
9. See *supra* para 24.9.

the complainant (or his pleader) despite a notice being given to him of the hearing under Section 385(1)(*iii*). This lacuna in Section 386 appears to have crept in by oversight, and it would be fair to expect that the appellate court would give to the complainant an opportunity of being heard in such a case.

After the two essential conditions as mentioned in (*a*) and (*b*) above are complied with, the appellate court, according to Section 386, may exercise any of the following powers in disposing of any appeal.

(*1*) *In cases where no interference is needed.*—The appellate court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal.

(*2*) *In an appeal from an order of acquittal.*—The appellate court may reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law [Section 386(*a*)].

It may be noted that any appeal against an order of acquittal can lie only to the High Court. While deciding an appeal against acquittal the power of the appellate court is no less than the power exercised while hearing appeals against conviction.[10]

As to the exercise of the powers of the appellate court, the Supreme Court in *Sanwat Singh* v. *State of Rajasthan*[11] has laid down three principles. *First,* the appellate court has full powers to review the evidence upon which the order of acquittal is founded.[12] *Second*, the principles laid down by the Judicial Committee of the Privy Council in *Sheo Swarup* v. *King Emperor*[13] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal. These principles require that the appellate court should give proper weight and consideration to such matters as, the view of the trial judge as to the credibility of the witnesses, the presumption of innocence in favour of the accused, the right of the accused to the benefit of doubt, and the slowness of an appellate court in disturbing the finding of fact arrived at by a judge who had the advantage of seeing the witnesses. These matters and guidelines are the "rules and principles" in the administration of justice. *Thirdly*, the appellate court in coming to its conclusion should not only

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10. *Kallu* v. *State of M.P.*, 2006 Cri LJ 799 (SC).
11. AIR 1961 SC 715, 719-20: (1961) 2 Cri LJ 179; *see* also observations in *Ganesh Bhavan Patel* v. *State of Maharashtra*, (1978) 4 SCC 371: 1979 SCC (Cri) 1: 1979 Cri LJ 51: AIR 1979 SC 135; *Awadesh* v. *State of M.P.*, (1988) 2 SCC 557: 1988 SCC (Cri) 361: 1988 Cri LJ 1154.
12. Also see *State of M.P.* v. *Bacchudas*, 2007 Cri LJ 1661; *V.N. Ratheesh* v. *State of Kerala*, 2006 Cri LJ 3634 (SC).
13. AIR 1934 PC 227: 1936 Cri LJ 786.

consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal, but should also express those reasons to hold that the acquittal was not justified.[14] The appellate court should deal with each one of the reasons which prompted the trial court to record the acquittal and should point out how, if at all, those reasons were wrong or incorrect.[15]

It follows as a corollary from the above, that if two views of the evidence are reasonably possible, one supporting an acquittal and the other indicating conviction, the appellate court (*i.e.*, the High Court) should not interfere merely because it feels, that it would, sitting as a trial court, have taken the other view.[16] Two views and conclusions cannot be right and one

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14. *See* the observations in *Damodarprasad Chandrikaprasad* v. *State of Maharashtra*, (1972) 1 SCC 107: 1972 SCC (Cri) 110, 116: 1972 Cri LJ 451, 455; *Bhagwati* v. *State of U.P.*, (1976) 3 SCC 235: 1976 SCC (Cri) 388, 391: 1976 Cri LJ 1171, 1173; *Noor Khan* v. *State of Rajasthan*, AIR 1964 SC 286: (1964) 1 Cri LJ 167; *Bahal Singh* v. *State of Haryana*, (1976) 3 SCC 564: 1976 SCC (Cri) 461, 462: 1976 Cri LJ 1568, 1569-70; *Sita Ram* v. *State of M.P.*, (1975) 4 SCC 171: 1975 SCC (Cri) 464, 467-68: 1975 Cri LJ 37, 39; *Ram Jag* v. *State of U.P.*, (1974) 4 SCC 201: 1974 SCC (Cri) 370, 373, 376: 1974 Cri LJ 479, 480, 483; *Solanki Chimanbhai Ukabhai* v. *State of Gujarat*, (1983) 2 SCC 174: 1983 SCC (Cri) 379, 383: 1983 Cri LJ 822, 824: *Samson Hyam Kemkar* v. *State of Maharashtra*, (1974) 3 SCC 494: 1973 SCC (Cri) 1096, 1100: 1974 Cri LJ 809; *Ramji Surjya* v. *State of Maharashtra*, (1983) 3 SCC 629: 1983 SCC (Cri) 748: 1983 Cri LJ 1105, 1110; *State of Orissa* v. *Trinath Dash*, 1982 Cri LJ 942, 945-46 (Ori); *S.D. Usman* v. *State*, 1982 Cri LJ 255, 260-61 (Mad); *Ajit Singh Thakur Singh* v. *State of Gujarat*, (1981) 1 SCC 495: 1981 SCC (Cri) 184, 187-88: 1981 Cri LJ 293; *Ganesh Bhavan Patel* v. *State of Maharashtra*, (1978) 4 SCC 371, 376: 1979 SCC (Cri) 1, 5: 1979 Cri LJ 51; *K. Gopal Reddy* v. *State of A.P.*, (1979) 1 SCC 355: 1979 SCC (Cri) 305, 310: 1980 Cri LJ 812; *Salim Zia* v. *State of U.P.*, (1979) 2 SCC 648: 1979 SCC (Cri) 568, 575-76: 1979 Cri LJ 323; *State of U.P.* v. *Haripal Singh*, 1999 SCC (Cri) 92; *Gurshinder Singh* v. *Joga Singh*, 1999 SCC (Cri) 1311; *Raj Kishore Jha* v. *State of Bihar*, 2003 Cri LJ 5040.

15. *Ram Chander* v. *State of Haryana*, (1983) 3 SCC 335, 341, 343: 1983 SCC (Cri) 628: 1983 Cri LJ 1072, 1075, 1077; *Harijana Thirupala* v. *Public Prosecutor, High Court of A.P.*, 2002 SCC (Cri) 1370; *State of U.P.* v. *Pappu*, 2005 Cri LJ 331 (SC).

16. *Labh Singh* v. *State of Punjab*, (1976) 1 SCC 181: 1976 SCC (Cri) 812, 817: 1976 Cri LJ 21, 24; *Bhim Singh* v. *State of Maharashtra*, 1974 Cri LJ 337, 338: (1974) 3 SCC 762: 1974 SCC (Cri) 238, 240; *Bhagirath Singh* v. *State of Bihar*, (1976) 1 SCC 614: 1976 SCC (Cri) 112, 119: 1976 Cri LJ 685, 690; *Muluwa* v. *State of M.P.*, (1976) 1 SCC 37: 1975 SCC (Cri) 759, 764: 1976 Cri LJ 717, 722; *S.M. Nair* v. *State of Kerala*, (1975) 3 SCC 150: 1974 SCC (Cri) 774, 780: 1974 Cri LJ 1279, 1283; *Rajendra Rai* v. *State of Bihar*, (1975) 3 SCC 193: 1974 SCC (Cri) 811, 816: 1974 Cri LJ 1471, 1474; *State of Punjab* v. *Savitri Devi*, 1983 Cri LJ 1093 (P&H) (FB); *S.D. Usman* v. *State*, 1982 Cri LJ 255, 260-61 (Mad); *Babu* v. *State of U.P.*, (1983) 2 SCC 21: 1983 SCC (Cri) 332, 338: 1983 Cri LJ 334, 337; *State of U.P.* v. *Samman Dass*, (1972) 3 SCC 201, 211: 1972 SCC (Cri) 275, 285-86: 1972 Cri LJ 487; *Tara Singh* v. *State of M.P.*, 1980 Supp SCC 466: 1981 SCC (Cri) 375, 376: 1981 Cri LJ 483; *Dinanath Singh* v. *State of Bihar*, (1980) 1 SCC 674: 1980 SCC (Cri) 320, 321: 1980 Cri LJ 921; *K. Gopal Reddy* v. *State of A.P.*, (1979) 1 SCC 355: 1979 SCC (Cri) 305, 310: 1980 Cri LJ 812, See observations in *Ganesh Bhavan Patel* v. *State of Maharashtra*, (1978) 4 SCC 371: 1979 SCC (Cri) 1: 1979 Cri LJ 51: AIR 1979 SC 135; *Awadesh* v. *State of M.P.*, (1988) 2 SCC 557: 1988 SCC (Cri) 361: 1988 Cri LJ

in favour of the acquittal of the accused must be preferred over the other because our criminal jurisprudence demands that the benefit of doubt must prevail.[17] If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of reasonable doubt. But, fanciful and remote possibilities must be left out of consideration.

Where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is not only open to the High Court but it is also its obvious duty to interfere with the order of acquittal in the interest of justice, lest the administration of justice be brought to ridicule.[18]

It has been held by the Supreme Court that in the matter of appreciation of evidence the powers of appellate court are as wide as that of the trial court. If the trial court has resorted to perverse application of the principles of evidence or show lack of appreciation of evidence the appellate court may re-appreciate the evidence and reach its conclusion.[19] The Supreme Court may re-appreciate evidence in cases where the High Court reverses conviction/acquittal and records acquittal/conviction.[20] When several persons were alleged to have committed an offence in furtherance of their common intention and all except one are acquitted, it is open to the appellate court under Section 386(1)(*b*) to find out on a reappraisal of the evidence who were the persons involved in the commission of the crime and although it could not interfere with the order of acquittal in the absence of a state appeal it was entitled to determine with the help of Section 34 IPC, the

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1154; *Peerappa* v. *State of Karnataka*, (2005) 12 SCC 461; *State of U.P.* v. *Gambhir Singh*, (2005) 11 SCC 271; *Umrao* v. *State of Haryana*, (2006) 10 SCC 136: AIR 2006 SC 2152; *Kalyan Singh* v. *State of Maharashtra*, (2006) 12 SCC 570; *Samghaji Hariba Patil* v. *State of Karnataka*, (2006) 10 SCC 494: (2007) 1 SCC (Cri) 113; *State of Jharkhand* v. *Nithyanand Pandey*, 2006 Cri LJ 1591 (Jhar); *State* v. *Chakkera Khader*, 2006 Cri LJ 3744 (Kant); *Public Prosecutor, High Court of A.P.* v. *Dagada Bujji Reddy*, 2005 Cri LJ 835 (AP).

17. *Damodarprasad* v. *State of Maharashtra*, (1972) 1 SCC 107: 1972 SCC (Cri) 110, 116: 1972 Cri LJ 451, 455; *Khedu Mohton* v. *State of Bihar*, (1970) 2 SCC 450: 1970 SCC (Cri) 479, 481: 1971 Cri LJ 20; *Dharamdeo Singh* v. *State of Bihar*, (1976) 1 SCC 610: 1976 SCC (Cri) 108, 112: 1976 Cri LJ 638, 641.
18. *K. Gopal Reddy* v. *State of A.P.*, (1979) 1 SCC 355: 1979 SCC (Cri) 305, 311: 1980 Cri LJ 812; see also *S.D. Usman* v. *State*, 1982 Cri LJ 255, 260 (Mad); *Khem Karan* v. *State of U.P.*, (1974) 4 SCC 603: 1974 SCC (Cri) 639, 642: 1974 Cri LJ 1033; *Aher Pitha Vajshi* v. *State of Gujarat*, 1983 SCC (Cri) 607: 1983 Cri LJ 1049; *Ravinder Singh* v. *State of Haryana*, (1975) 3 SCC 742: 1975 SCC (Cri) 202, 211: 1975 Cri LJ 765; *State* v. *Des Raj*, 1979 Cri LJ 558, 562 (J&K); *State of M.P.* v. *Bacchudas*, 2007 Cri LJ 1661; *V.N. Ratheesh* v. *State of Kerala*, 2006 Cri LJ 3634 (SC).
19. *Lal Mandi* v. *State of W.B.*, (1995) 3 SCC 603: 1995 SCC (Cri) 560; *Dharma* v. *Nirmal Singh*, (1996) 7 SCC 471: 1996 SCC (Cri) 444: 1996 Cri LJ 1631. In such cases the complainant can approach the High Court by way of revision.
20. *Satbir* v. *Surat Singh*, (1997) 4 SCC 192: 1997 SCC (Cri) 538; *Madan Lal* v. *State of J&K*, (1997) 7 SCC 677: 1997 SCC (Cri) 1151.

guilt of the person who committed the crime, notwithstanding the acquittal of the co-accused.[21] Also, in cases where the co-accused has not appealed the benefit of the appellate court's order could be extended to him.[22]

If the appellate court finds the accused guilty it may reverse the order of acquittal and pass sentence on him according to law. But in such a case as the appellate court is to do what the trial court ought to have done, it should not impose a punishment higher than the maximum that could have been imposed by the trial court. An appeal court is after all 'a court of error', that is, a court established for correcting an error.[23] It has also been expressly provided by the second proviso to Section 386 that the appellate court shall not inflict greater punishment for the offence, which in its opinion the accused has committed, than might have been inflicted for that offence by the court passing the order or sentence under appeal.

In passing an order in appeal from an order of acquittal, the High Court has the same power, to convict the accused of an offence disclosed by the evidence on record, which the trial court has under Sections 221-222, even though no charge in respect of that offence has been framed against the accused.[24]

In an appeal against acquittal, the High Court has power under Section 386(*a*) to direct further inquiry to be made. Here inquiry means according to Section 2(*g*), every inquiry other than a trial conducted under the Code by a magistrate or court. Therefore, the High Court can put the proceedings at the pre-trial stage and obviously at the stage before the framing of the charge but after the filing of the police report.[25]

The expression "retrial" in Section 386(*a*) is used in an unlimited or unrestricted sense. In the absence of any indication to the contrary it can be taken to mean partial retrial also. An appellate court reversing the order of acquittal may order a retrial; and such a retrial can be ordered from the stage at which an error or illegality has crept in.[26]

(*3*) *In an appeal from a conviction—*

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21. *Khujji* v. *State of M.P.*, (1991) 3 SCC 627: 1991 SCC (Cri) 916: 1991 Cri LJ 2653; *Brathi* v. *State of Punjab*, (1991) 1 SCC 519: 1991 SCC (Cri) 203: 1991 Cri LJ 402.
22. *Jashubhal Bharatsing Gohil* v. *State of Gujarat*, (1994) 4 SCC 353: 1994 SCC (Cri) 1193; *Raja Ram* v. *State of M.P.*, (1994) 2 SCC 568: 1994 SCC (Cri) 573.
23. *Jagat Bahadur* v. *State of M.P.*, AIR 1966 SC 945: 1966 Cri LJ 709, 712; see also *Shankar Kerba Jadhav* v. *State of Maharashtra*, (1969) 2 SCC 793, 801: (1971) 1 Cri LJ 693, 697-99.
24. *Ramaswamy Nadar* v. *State of Madras*, AIR 1958 SC 56: 1958 Cri LJ 228, 230-31; *Emperor* v. *Ismail Khadirsab*, AIR 1928 Bom 130: 29 Cri LJ 403.
25. *Jetha Nand* v. *State of Haryana*, 1983 Cri LJ 305, 308 (P&H).
26. *K. Subramanian* v. *Kunhumon*, 1974 Cri LJ 548, 549 (Ker); *Lakshmanan Sundaram* v. *State of Kerala*, 1991 Cri LJ 1800 (Ker).

(*i*) The appellate court may reverse the finding and sentence and acquit or discharge the accused, or order him to be retried by a court of competent jurisdiction subordinate to such appellate court or committed for trial, or

(*ii*) the appellate court may alter the finding, maintaining the sentence, or

(*iii*) the appellate court may with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same [Section 386(*b*)].

Where the appellate court, under sub-clause (*i*) above, reverses the finding and sentence, it has two courses open; it may acquit or discharge the accused, or it may order the accused to be retried or committed for trial. The expression "alter the finding" in Section 386(*b*) above has only one meaning and that is "alter the finding of conviction and not the finding of acquittal".[27] The words "reverse the finding and sentence" in sub-clause (*i*) above mean to set aside or annul the conviction and sentence.

A retrial is not to be ordered merely to enable the prosecution to adduce additional evidence for filling up the gaps or lacunae left at the trial.[28] An order for retrial of a criminal case is made in exceptional cases, and not unless the appellate court is satisfied that the trial court had no jurisdiction to try the case or that the trial was vitiated by some serious illegality or irregularity, or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial, or that the prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge and in the interests of justice the appellate court deems it appropriate, having regard to all the circumstances of the case, that the accused should be put on his trial again.[29] Once retrial is ordered by the appellate court in exercise of powers under Section 386(*b*)(*i*), the evidence which is already on record is deemed to be obliterated off from the record.[30] It may also be noted that there is no power of remand except for the purpose of retrial. In a case where the trial court had failed to hear the accused on the question of sentence, the appellate court cannot, under Section 386(*b*) or under any

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27. *State of A.P.* v. *Thadi Narayana*, AIR 1962 SC 240: (1962) 1 Cri LJ 207, 211.
28. *State of Gujarat* v. *Rajubhai Dhamirbhai Bariya*, 2004 Cri LJ 771 (Guj).
29. *Ukha Kolhe* v. *State of Maharashtra*, AIR 1963 SC 1531: (1963) 2 Cri LJ 418, 423; see also *Akalu Ahir* v. *Ramdeo Ram*, (1973) 2 SCC 583: 1973 SCC (Cri) 903: 1973 Cri LJ 1404; *Rajeswar Prasad Misra* v. *State of W.B.*, AIR 1965 SC 1887: (1965) 2 Cri LJ 817, 821; *Matukdhari Singh* v. *Janardan Prasad*, AIR 1966 SC 356: 1966 Cri LJ 307, 310; *Chandra Lal Das* v. *State of Tripura*, 2003 Cri LJ 2162 (Gau).
30. *Chandra Lal Das* v. *State of Tripura*, 2003 Cri LJ 2162 (Gau).

other section of the Code, remand the case to the trial court for the purpose of hearing the accused on the question of sentence.[31]

The order of retrial which the appellate court can pass in the context of an appeal from a conviction is retrial for the same offence for which the accused was convicted and not of another since it would be wrong for the appellate court to assume that the whole case is before it.[32]

The power of the appellate court to commit the accused person for trial is not confined to cases exclusively triable by a court of session, and it is within the power of the appellate court to commit even such cases as are triable by any magistrate.[33]

The words "alter the finding" in sub-clause (*ii*) above mean only the alteration of the order of conviction and further these words only mean modification of the conviction and not its obliteration or annulment. It is now well settled that the power of the appellate court to alter the finding is confined to offences for which the accused could have been convicted by the trial Court under Sections 221 and 222.[34]

Situations may arise in which the accused is convicted of an offence less grave than that for which he was prosecuted. In such cases, the view taken is that he is deemed to have been acquitted of the graver offence. Thus where a person is charged with an offence of murder under Section 302, IPC but convicted of culpable homicide not amounting to murder under Section 304, IPC, there is an implied acquittal of the offence of murder under Section 302, IPC.[35] If therefore the accused appeals against the conviction under Section 304, IPC and the State does not appeal against the acquittal under Section 302, the appellate court cannot alter the finding under Section 304, IPC into one of conviction for murder under Section 302 of the IPC.[36]

In a case where an accused person is charged with several offences, the trial is no doubt one; but where the accused is acquitted of some offences, and convicted of others, the character of the appellate proceedings and their scope and extent is necessarily determined by the nature of the appeal preferred before the appellate court. If the accused files an appeal against his conviction, and the State does not appeal against the order of acquittal, then it is only the order of conviction that falls to be considered by the

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31. *Pratul Chaudhari* v. *State*, 1979 Cri LJ 103, 104 (Del); *Mukand Lal* v. *State*, 1979 Cri LJ 105, 106 (Del).
32. *Jetha Nand* v. *State of Haryana*, 1983 Cri LJ 305, 308 (P&H); see also *State of A.P.* v. *Thadi Narayana*, AIR 1962 SC 240: 1962 (1) Cri LJ 207.
33. *State of U.P.* v. *Shankar*, AIR 1962 SC 1154: (1962) 2 Cri LJ 261, 262.
34. For the text of Ss. 221 and 222, see *supra* paras 15.11 and 15.14.
35. *Kishan Singh* v. *Emperor*, AIR 1928 PC 254: 29 Cri LJ 828; see also *Emperor* v. *Sheo Darshan Singh*, AIR 1922 All 487: 23 Cri LJ 202.
36. *See* 41st Report, pp. 269-270, para 31.38.

appellate court, and not the order of acquittal. Therefore, in construing the expression "alter the finding" in Section 386(*b*)(*ii*) above, it cannot be assumed that the whole case is before the appellate court when it entertains an appeal against conviction. The expression "alter the finding" has only one meaning, and that is, "alter the finding of conviction" and not "alter *any* finding of the trial court whether it be one of conviction or acquittal".[37] Similarly, where an appeal against acquittal is preferred by the State, the respondents are not entitled to challenge their conviction in respect of other offences when they have not preferred any appeal against the same. Further, since they have not availed themselves of the right of appeal, a revision at their instance is barred under Section 401(4). It is, however, open to the High Court to act *suo motu* to prevent a miscarriage of justice.[38]

According to sub-clauses (*ii*) and (*iii*) of Section 386 (*b*) above, the appellate court may alter the finding and maintain the sentence or alter the nature or the extent or the nature and extent of the sentence but not so as to enhance the same; or the appellate court may even without altering the finding, alter the nature or the extent, or the nature and the extent, of the sentence but not so as to enhance the same.

A sentence is said to be enhanced when it is made more severe. If the sentence of fine is changed into one of imprisonment it would amount to enhancement of the sentence. However, an enhancement of fine was held not to amount to enhancement of sentence.[39] Where a court awards a sentence of fine and also directs that in default of payment of fine the offender shall undergo a term of imprisonment, the offender, according to Section 70 of IPC, is not relieved of the liability to pay the fine by undergoing the said term of imprisonment. Therefore, where the sentence of 4 months' imprisonment passed by the trial court was altered by the appellate court to " '3 months' imprisonment and a fine of Rs 500 and in default to undergo rigorous imprisonment for one month", the sentence passed by the appellate court would amount to enhancement of the sentence as the fine would still be recoverable after undergoing the whole imprisonment of four months.[40] However, in a case where the aggregate sentence of imprisonment awarded by the appellate court is in any way less than the period of the original sentence of imprisonment, the fact that fine is in addition imposed by the appellate court would not be considered as an enhancement of the sentence by the appellate court.[41]

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37. *State of A.P.* v. *Thadi Narayana*, AIR 1962 SC 240: (1962) 1 Cri LJ 207, 211.
38. *State of Orissa* v. *Mathuri Mallik*, 1979 Cri LJ 508, 510 (Ori); see also *Lakhan Mahto* v. *State of Bihar*, AIR 1966 SC 1742: 1966 Cri LJ 1349.
39. *Devu* v. *Excise Circle Inspector*, 1986 Cri LJ 1478 (Ker).
40. *Nandeswar Barua* v. *State*, AIR 1952 Ass 81: 1952 Cri LJ 917; see also *Ganga* v. *Emperor*, AIR 1942 Oudh 399: 43 Cri LJ 719.
41. *Bhakhtavatsalu Naidu* v. *Emperor*, ILR (1906) 30 Mad 103 (FB).

(*4*) *In an appeal for enhancement of sentence—*

(*i*) The appellate court may reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court competent to try the offence, or

(*ii*) the appellate court may alter the finding maintaining the sentence, or

(*iii*) the appellate court may with or without altering the finding, alter the nature or the extent, or the nature and extent of the sentence, so as to enhance or reduce the same [Section 386(*c*)].

As already seen, the appellate court is not to inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the court passing the order or sentence under appeal [proviso 2 to Section 386].

The first proviso to Section 386 provides that the sentence shall not be enhanced unless the accused has had an opportunity showing cause against such enhancement. This provision is already included in Section 377(3).[42]

The powers enumerated here in case of an appeal for enhancement of the sentence are almost the same powers as described in sub-para (3) above in respect of an appeal against the conviction. Here, of course additional powers to enhance or reduce the sentence have been given to the appellate court.

If a substantial punishment has been given for the offence of which a person is found guilty, after taking due regard of all the relevant circumstances, normally there should be no interference by an appellate court. On the other hand, interference will be justified when the sentence is manifestly inadequate or unduly lenient in the particular circumstances of the case. The interference will also be justified when the failure to impose a proper sentence may result in miscarriage of justice.[43]

(*5*) *In an appeal from any other order.*—The appellate court may in such a case alter or reverse such order [Section 386(*d*)].

(*6*) *Consequential or incidental orders.*—The appellate court may make any amendment or any consequential or incidental order that may be just or proper [Section 386(*e*)].

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42. See *supra* para 24.4.

43. *Kodavandi Moidean* v. *State of Kerala*, (1973) 3 SCC 469: 1973 SCC (Cri) 369, 371: 1973 Cri LJ 671, 673; see also *Bed Raj* v. *State of U.P.*, AIR 1955 SC 778: 1955 Cri LJ 1642, 1644; *Shiv Govind* v. *State of M.P.*, (1972) 3 SCC 399: 1972 SCC (Cri) 549: 1972 Cri LJ 1181.

Consequential and incidental orders are in fact the complements of the main order of the court and should necessarily follow the main order. In a case where the accused is convicted for more offences than one, it is the plain duty of the court to impose an appropriate sentence under each section of which the accused is convicted, and an omission to do so is an error in law. Therefore the appellate court in such a case would have the power under the above Section 386(*e*) to pass such order as to sentence as would be consequential upon the order of conviction.[44] The powers given to the appellate court under Section 386 are quite wide and the court can alter or amend a charge provided that the accused is not prejudiced either by keeping him in the dark about the charge or in not giving a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him.[45] In view of the powers given by Section 386(*e*) above, the appellate court can pass orders under Sections 106(4), 335, 356(4), 357 (4), 359(2), 452, 454(3) and 456(2).

(*7*) *No dismissal of appeal for default or on the appeal becoming infructuous.*—The Code does not contain any provision for dismissal of an appeal for default.[46] Neither is there any provision for dismissal on the ground that the appeal has become infructuous. From the scheme of the code and in view of the finality attached to the appellate judgment, it appears that once the court decides not to dismiss an appeal summarily, it should dispose it of giving reasons for its conclusion except where it abates according to the provisions of Section 394.[47]

24.13. Procedure where judges of court of appeal are equally divided.—When an appeal under this chapter is heard by a High Court before a bench of judges and they are divided in opinion, the appeal with their opinions, shall be laid before another judge of that court, and that judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion (Section 392). From this provision it is not appropriate to infer that the legislature intended that a criminal appeal should be laid only before a bench of two judges.[48] However the proviso to the above Section 392 provides that if one of the judges constituting the bench or, where the appeal is laid before another judge under this section, that judge, so requires, the appeal shall be reheard and decided by a larger bench of judges. A question may arise as to whether the third judge ought to consider himself bound by the views expressed by

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44. *Jayaram Vithoba* v. *State of Bombay*, AIR 1956 SC 146: 1956 Cri LJ 318, 321.
45. *K.C. Mehta* v. *State of Maharashtra*, (1969) 3 SCC 166: 1970 SCC (Cri) 19, 23: 1970 Cri LJ 510; see also *Thakur Shah* v. *Emperor*, AIR 1943 PC 192: 45 Cri LJ 126.
46. *State* v. *Ram Gopal*, 2006 Cri LJ 2805 (Del).
47. *Balan* v. *State*, 1981 Cri LJ 1549, 1550 (Ker); for S. 394, see *infra*, para 24.16; *Naresh Kumar* v. *State of U.P.*, 1981 Cri LJ 378, 379 (All).
48. *Satwant Singh* v. *State*, 1986 Cri LJ 1352, 1354 (Del).

necessarily involves an examination of the validity of the order of conviction. The sentence follows the conviction and the validity of the two is interconnected.[66]

The main object of the proviso to sub-section (2) above is to provide a machinery whereby the children or the members of the family of a convicted person who dies during appeal could test the conviction and get rid of the odium which would otherwise attach to them.[67] Further, the interest of the legal representatives of the deceased appellant in the appeal may not be purely sentimental, it can be pecuniary also even though the appeal might have been against the sentence of imprisonment. Thus, if the conviction is on a charge of murder of a near relation whose heir, or one of whose heirs, is the alleged murderer, he (if the conviction is not set aside) will be disqualified from inheriting his property. If he dies during the pendency of the appeal, his heirs have a pecuniary interest in prosecuting the appeal. If the appeal succeeds, their right of inheritance to the property of the deceased through the appellant will be saved.[68] Therefore, the principle underlying the above proviso appears to be eminently sound. The requirement of the leave of the court to continue the appeal, and the time-limit provided for filing an application for such leave, are the necessary safeguards against the probable misuse of the provision.

24.19. Legal aid in appeal cases.—An indigent accused person may be involved in an appeal case either as a respondent in an appeal against his acquittal, or as an appellant seeking redress against the mistakes and errors in the order of conviction passed against him by the trial court. In either case the liberty of indigent accused person may be in jeopardy and hence Article 21 of the Constitution would require the appeal procedure to be 'reasonable, fair and just' procedure. As an essential ingredient of such a procedure, as has been held by the Supreme Court in *Hussainara Khatoon (IV)* v. *Home Secretary, State of Bihar*[69] it will be necessary to provide at State expense, a lawyer to an indigent accused person, be he the respondent or the appellant, if he is unable to engage one due to his poverty or indigence. If legal aid to an indigent accused person is an essential component of 'reasonable, fair and just' procedure in trial proceedings, it is equally, if not more, so in appellate proceedings. First it is not easy for a layman to understand all the legal implications of the judgment of the trial court in the context of the appellate proceedings. Secondly, in such proceedings, quite often, intricate questions of law and fact are involved. They would require the skilful and careful handling by a competent lawyer. Thirdly, the State is represented in appeals by well qualified and experienced Public Prosecutors. Therefore, for the proper and

66. (1975) 3 SCC 343: 1974 SCC (Cri) 951.
67. *See* 41st Report, p. 280, para 31.64.
68. *Ibid.*, at pp. 279-280, para 31.62.
69. (1980) 1 SCC 98: 1980 SCC (Cri) 40, 47: 1979 Cri LJ 1045.

just working of the adversary system at the appellate stage, it is necessary that the indigent accused person is represented by a competent lawyer. Though justice and fair play do require adequate provision for legal aid at the appellate stage, it has not so far attracted as much attention as it has in case of trial procedures. The Code does not make any specific provision for giving legal aid to indigent accused persons in appeal proceedings. However the Supreme Court has held that as a matter of prudence the court, may in an appropriate case appoint a counsel at the state's expense to argue for the cause of the accused.[70]

As mentioned earlier in para 14.11 the Code has made provision to provide a lawyer at State expense to an indigent accused person in a trial before a court of session; the Code also enables a State Government to extend this right to any class of trials before other courts in the State. If in any such trial the accused is acquitted and the State prefers an appeal against the order of acquittal, even in such a situation, the Code surprisingly fails to make any specific provision for providing a lawyer to the indigent accused person to defend himself.

In accordance with civilised jurisprudence, the Code, subject to just exceptions, provides for a right of appeal against an order of conviction. However such a right would not mean much to the indigent convicted person without the able representation by a competent lawyer. The Code does not make any provision for legal aid even in such cases where the order of conviction is prima facie wrong and invoking the appellate jurisdiction is necessary to avoid miscarriage of justice. In this context, the existing provisions regarding "jail appeals"[71] are far from adequate and can hardly be considered as a proper substitute for able representation of the indigent convicted person by a competent lawyer. Here it may be pertinent to note the observations of the Supreme Court in *M.H. Hoskot* v. *State of Maharashtra*[72].

The Supreme Court observed:

> "*Maneka Gandhi case*[73] has laid down that personal liberty cannot be cut out or cut down without *fair* legal procedure. Enough has been set out to establish that a prisoner, deprived of his freedom by court sentence but entitled to appeal against such verdict, can claim, as part of his protection under Article 21 and as implied in his statutory right to appeal, the necessary concomitant of right to counsel to prepare and argue his appeal.

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70. *Rishi Nandan Pandit* v. *State of Bihar*, (2000) 3 SCC 409.
71. See *supra*, paras 24.6(2) and 24.8(4)(6).
72. (1978) 3 SCC 544: 1978 SCC (Cri) 468: 1978 Cri LJ 1678.
73. (1978) 1 SCC 248.

> If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the court under Article 142 read with Articles 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual 'for doing complete justice'. This is a necessary incident of the right of appeal conferred by the Code and allowed by Article 136 of the Constitution. The inference is inevitable that this is a State's duty and not government's charity."[74]

The Supreme Court have had an opportunity to express its difficulty in processing an appeal when the petitioner in person appeared and argued his case.[75] The court suggested that such persons should be provided legal aid and it indicated various agencies offering legal aid to poor. At present the implementation of the Legal Services Authorities Act, 1986 may help the indigent appellant in getting legal aid.

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74. 1978 SCC (Cri) 468 at 480-481: (1978) 3 SCC 544.
75. *Bhuwneshwar Singh* v. *Union of India*, (1993) 4 SCC 327: 1994 SCC (Cri) 1: 1993 Cri LJ 3454.

25
Review Procedures: Revision

25.1. Object and scope of the chapter.—In the earlier chapter it was considered how a person aggrieved by the decision of a criminal court could go in appeal to the higher court and obtain redress. However, the right of appeal is not available in each and every case and is confined to such cases as are specifically provided by law. Secondly, even in such specified cases, the Code ordinarily allows only one appeal, and a review of the decision of the appellate court is not normally permissible by way of further appeal to yet another higher court. In order to avoid the possibility of any miscarriage of justice in cases where no right of appeal is available, the Code has devised another review procedure, namely, ''revision''. Section 397 to 405 deal with the powers of ''revision'' conferred on the higher courts and the procedure to regulate these powers. The powers of revision conferred on the higher courts are very wide and are purely discretionary in nature. Therefore, no party has any right as such to be heard before any court exercising such powers. The revisional powers, though quite wide, have been circumscribed by certain limitations. For instance, (*a*) in cases where an appeal lies but no appeal is brought, *ordinarily* no proceeding by way of revision shall be entertained at the instance of the party who could have appealed, (*b*) the revisional powers are not exercisable in relation to any interlocutory order passed in any appeal, inquiry or trial; (*c*) the court exercising revisional powers is not authorised to convert a finding of acquittal into one of conviction; (*d*) a person is allowed to file only one application for revision either to the court of session or to the High Court; if once such an application is made to one court, no further application by the same person shall be entertained by the other court. These matters have been discussed in this chapter in Part B.

The chapter also deals with other provisions contained in Sections 395-396 which enable an inferior court to consult the High Court on a mater of law in certain circumstances. If a criminal court other than a High Court has to decide whether a particular enactment is constitutionally valid, and is itself of opinion that it is not, but finds that neither the High Court to which the court is subordinate nor the Supreme Court has pronounced on that enactment, the court is required to make a reference to the High Court for the decision on that question. The intention here is that the validity of the laws possibly in conflict with the

Constitution should be decided authoritatively and quickly.[1] It has also been provided that a court of session or a metropolitan magistrate may in its or in his discretion refer for decision to the High Court, any other question of law arising in the hearing of a case pending before such court or magistrate. These provisions regarding reference to the High Court are contained in Sections 395 and 396 and have been discussed in Part A of this chapter.

PART A

Reference of High Court

25.2. Reference to High Court and post-reference procedure.—(*1*) *Reference to High Court.*—A reference to High Court may be on a question of the constitutional validity of any law or it may be on any other question of law. In this connection Section 395 provides as follows:

395. Reference to High Court.—(1) Where any court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of the opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation.—In this section, "Regulation" means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

(2) A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.

Every court subordinate to the High Court is required to make a reference to the High Court under sub-section (1) above, if the following conditions are satisfied:

(*a*) The Court is satisfied that a case pending before it, involves a question of the constitutional validity of any Act, Ordinance or Regulation or any provision contained therein. A mere plea raised by a party challenging the validity of the Act is not sufficient to

1. *See* 41st Report, p. 284, para 32.2.

interesting or important they may be.[6] Nor does the sub-section empower a court of session or a metropolitan magistrate to refer the points of law settled by the decisions of the High Court, where such court or magistrate doubts the correctness of those decisions.[7] In a recent decision, it has been held that the mere event that the Sessions Judge has entertained an application for revision under Section 379 and called for the record of any case pending in any inferior criminal court will not thereby transfer the pendency of the case to his court and clothe him with jurisdiction and power to make a reference under Section 395(2) on a question of law arising in the hearing of such revision.[8] Sub-section (3) above deals with the powers of the referring court to commit the accused to jail or to release him on bail. This has already been considered in para 12.9.

(2) *Post-reference procedure.*—When a question has been so referred under Section 395, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the court by which the reference was made, which shall dispose of the case conformably to the said order [Section 396(1)].

The High Court may direct by whom the costs of such reference shall be paid [Section 396(2)].

PART B

Revisional Jurisdiction

Sections 397 to 405 relate to powers of revision. While Sections 399, 400 and 401 respectively deal with powers of revision of a Sessions Judge, an Additional Sessions Judge and the High Court, Section 397 (read with Section 400) empowers these judges and the High Court to call for the records of the subordinate courts for the purpose of exercising the powers of revision, and Section 398 empowers them to order further inquiry under certain circumstances. These sections, particularly Sections 397-401 are interlinked and should be read together.

25.3. Power to call for and examine the record of any proceeding before subordinate court.—In this connection Section 397 provides as follows:

397. Calling for records to exercise of powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness,

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6. *A.S. Krishna, In re*, AIR 1954 Mad 993: 1954 Cri LJ 1521, 1523.
7. *Emperor* v. *Ratan Singh*, ILR (1948) 2 Cal 117: 52 CWN 369, 369-70; *Emperor* v. *Ismail Hirji*, AIR 1930 Bom 49, 54: 31 Cri LJ 633.
8. *Narbada* v. *Mohd. Hanif*, 1982 Cri LJ 2330, 2332 (Raj).

legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Under the above section, the High Court or the Sessions Court is empowered to call for and examine the record of any proceedings before any inferior court and satisfy itself as to the correctness, legality or propriety of any order passed by the inferior court[9]. If any defect, irregularity or illegality justifying, corrective action, is found on the examination of the record, the subsequent sections, namely 398-401 empower the superior courts to pass suitable orders to remove the miscarriage of justice. The object of revisional jurisdiction is to confer upon superior criminal courts, a kind of paternal or supervisory jurisdiction[10].

The term ''proceeding'' as mentioned in Section 397(1) above, cannot necessarily be said to have any reference by itself to the commission or trial of an offence. There are some provisions in the Code itself which are not concerned or necessarily concerned with the commission or prevention of an offence, for instance Sections 125-126, 133, 144 etc[11]. The word ''proceeding'' cannot be given such a restrictive significance; a proceeding cannot be said to have any reference by itself to the commission or trial of an offence.[12] ''Proceeding'' is a very wide term, and would include any judicial proceeding taken before any inferior criminal court even though it may not relate to any specific offence. In several decided cases, it has been held that the test is not the nature of the proceeding but the nature of the court in which that proceeding is held.[13]

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9. *Ishar Singh* v. *State of Punjab*, 1974 Cri LJ 231 (P&H); *Ganesh Narayan Dangre* v. *Eknath Hari Jhampe*, 1978 Cri LJ 1009, 1012 (Bom); *S.P. Mallik* v. *State of Orissa*, 1982 Cri LJ 19, 22 (Ori).
10. *Purshottam Vijay* v. *State*, 1982 Cri LJ 243, 248 (MP).
11. *Public Prosecutor* v. *L. Ramayya*, 1975 Cri LJ 144, 155 (AP) (FB).
12. *Ujamshi Govindji Sanghadia* v. *Emperor*, AIR 1946 Bom 533: 48 Cri LJ 152 (FB).
13. *Public Prosecutor* v. *L. Ramayya*, 1975 Cri LJ 144, 155-56 (AP) (FB); *Kumaravel Nadar* v. *Shanmuga Nadar*, (1940) 41 Cri LJ 769: AIR 1940 Mad 465 (FB); *Ram Gopal Goenka* v. *Corpn. of Calcutta*, AIR 1925 Cal 1251: (1925) 26 Cri LJ 1533; *B.G. Horniman, In re*, AIR 1933 Bom 59: (1933) 34 Cri LJ 239.

The word "inferior" in relation to court in Section 397(1) does not carry with it any stigma or any suggestion that the court is under the administrative orders of the superior court. Inferior criminal court only means judicially inferior to the High Court (or Sessions Court). A court is inferior to another court when an appeal lies from the former to the latter.[14] The Sessions Judge is, therefore, inferior to the High Court within the meaning of Section 397(1) and the High Court may call for and examine the record of any proceeding before the Sessions Judge[15]. It has been held that the Sessions Judge has revisional jurisdiction in relation to appellate judgment of the Assistant Sessions Judge and the Chief Judicial Magistrate.[16]

The explanation to Section 397(1) merely clarifies that all magistrates, whether executive or judicial, shall be deemed to be inferior to the Sessions Judge for the purpose of Sections 397 and 398. A revision may therefore lie from the order of Additional District Magistrate ordering possession of a room to the landlord, to the Sessions Court.[17] The constitutional position being well-settled that all the magistrates are inferior to the High Court and the High Court has got the superintending and supervisory jurisdiction under Article 227 of the Constitution, there was no necessity for the legislature also to say in the explanation that all magistrates are inferior to the High Court.[18] It may, however, be noted that a magistrate holding an inquiry under Section 176 does not function as a criminal court, and therefore, the records of such an inquiry cannot be called and examined by the High Court under Section 397.[19]

The power of the revisional court to release the offender on bail or bond under Section 397(1) has already been considered in para 12.8.

From the nature of the powers given to the revisional courts (i.e the High Court or the Court of Session), it seems to follow that the revisional court can act either on its own motion or on the motion of even a stranger who may be instrumental in bringing to the knowledge of the revisional court a matter which otherwise the revisional court may not have known. Of course, the normal course of the High Court or court of session to be seized of a matter is either at the instance of the prosecution or the accused or the High Court or court of session itself, but in some rare cases information

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14. *Krishnaji Vithal* v. *Emperor*, AIR 1949 Bom 29: 49 Cri LJ 593.
15. *Ramachandra Puja Panda Samant* v. *Jambeswar Patra*, 1975 Cri LJ 1921, 1922 (Ori); *Thakur Das* v. *State of M.P.*, (1978) 1 SCC 27: 1978 SCC (Cri) 21, 28: 1978 Cri LJ 1.
16. *Gopalan* v. *State of Kerala*, 1981 Cri LJ 1217, 1224 (Ker).
17. *Abinash Mahanta* v. *Jajneswar Mohanta*, 1989 Cri LJ 489 (Gau).
18. *Ramachandra Puja Panda Samant* v. *Jambeswar Patra*, 1975 Cri LJ 1921, 1922-23 (Ori); *see* observations in *Anjanappa* v. *State of Karnataka*, 1988 Cri LJ 248 (Kant); *Mansur* v. *State of M.P.*, 1986 Cri LJ 57, 59 (MP). The Court categorically pointed out in this case that executive Magistrates are subordinate to the High Court.
19. *Ismat Sara* v. *State of Karnataka*, 1982 Cri LJ 1076, 1080 (Kant).

may be received by the High Court or court of session even from a stranger. Thus, the revisional court can interfere on information contained in the newspaper or a placard on a wall or on an anonymous postcard, provided it considers that sufficient ground has been established to justify its doing so. At the same time the revisional court has to be loath to take action on an application for revision presented by a third party on its own responsibility and without authority from either of the parties. It becomes the duty of the revisional court to see that a stranger to the proceedings does not employ his information as an instrument of vengeance on the accused or attempt to serve his own private end.[20]

Sub-section (2) of Section 397 bans the exercise of revisional power in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. This provision has been introduced with a view to speeding up the disposal of criminal cases. It was thought that revision petitions against interlocutory orders would not only delay justice but might sometimes defeat it[21]. Therefore Section 397(2) enacts a statutory bar on the power of revision in relation to any interlocutory order and thereby intends to bring about expeditious disposal of criminal cases.[22] The bar is not however likely to prejudice any party aggrieved by the interlocutory order as such party can always challenge it in due course if the final order goes against it.

What is an interlocutory order has not been defined in the Code. A reasonable interpretation of the term would suggest that an interlocutory order is one which is passed at some intermediate stage of a proceeding generally to advance the cause of justice for the final determination of the rights between the parties.[23] The test in determining the final or interlocutory nature of an order is one and the same both in civil as well as criminal cases. That test is whether or not the order in question finally disposes of the rights of the parties or leaves them to be determined by the court in the ordinary way. If the order does not finally dispose of the rights of the parties and the matters in dispute, and leaves the suit or case still a live suit in which the rights of the parties have to be determined, the order will remain interlocutory irrespective of the stage at which it is passed and also irrespective of the conclusive decision of the subordinate matters with

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20. *Purshottam Vijay* v. *State*, 1982 Cri LJ 243, 248-49 (MP); see also *Shailabala Devi* v. *Emperor*, (1933) 34 Cri LJ 1115: AIR 1933 All 678 (FB); *Pratap* v. *State of U.P.*, (1973) 3 SCC 690: 1973 SCC (Cri) 496, 510: 1973 Cri LJ 565, 575.
21. *See* notes on Cls. 407 to 415.
22. *Parmeshwari Devi* v. *State*, (1977) 1 SCC 169: 1977 SCC (Cri) 74, 77: 1977 Cri LJ 245; *Madhu Limaye* v. *State of Maharashtra*, (1977) 4 SCC 551: 1978 SCC (Cri) 10, 15: 1978 Cri LJ 165; *Amar Nath* v. *State of Haryana*, (1977) 4 SCC 137: 1977 SCC (Cri) 585, 589: 1977 Cri LJ 1891.
23. *Dhola* v. *State*, 1975 Cri LJ 1274, 1276 (Raj); *Parmeshwari Devi* v. *State*, (1977) 1 SCC 169: 1977 SCC (Cri) 74: 1977 Cri LJ 245.

which it deals.[24] The grant or refusal of a bail application is essentially an interlocutory order.[25] But a conflict of opinion with reference to this has however arisen. While the Allahabad High Court has, following the Supreme Court decisions [26] held[27] that a bail order is an interim order, the Bombay High Court has consistently been holding the view that it is not[28]. In fact the Supreme Court has mentioned bail order as an example of interlocutory orders and the Allahabad High Court gave emphasis on it to arrive at its conclusion. The Bombay High Court has also relived on the observations and discussions in the abovesaid Supreme Court decisions to reach its conclusion.

Having regard to the nature of the bail orders in most criminal cases and the observations of the Supreme Court in *Madhu Limaye case*[29] that there are orders which are neither interlocutory nor final, it seems the view of the Bombay High Court is in consonance with the scheme of the code.

The difference between an application for cancellation of bail and a revision application against a bail order has been succinctly spelt out by the Bombay High Court thus:

> ''[W]hen an order is passed by the trial court and the High Court is later on approached for the purpose of the cancellation of the bail, the basic postulate is that the order was valid when it was passed, but that on account of supervening circumstances it needed to be varied or modified or cancelled. When you file a revision application against the order granting bail, your grievance is that the order was bad from its inception''.[30] An order passed by a magistrate under Sections 107/111 is nothing but an interlocutory order.[31]

Generally speaking, the test for determining whether an order is of a final or interlocutory nature, is whether or not the order in question finally disposes of the rights of the parties or leaves them to be determined by the court in the ordinary way. The term ''interlocutory order'' is not to be understood in any broad or artistic sense; it merely denotes orders of a purely interim or

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24. *Bindbasni* v. *State of U.P.*, 1976 Cri LJ 1660, 1662 (All); see also *Parmeshwari Devi* v. *State*, (1977) 1 SCC 169: 1977 SCC (Cri) 74: 1977 Cri LJ 245.
25. *Dhola* v. *State*, 1975 Cri LJ 1274, 1276 (Raj).
26. *Amar Nath* v. *State of Haryana*, (1977) 4 SCC 137: 1977 SCC (Cri) 585: 1977 Cri LJ 1891: AIR 1977 SC 2185 and *Madhu Limaye* v. *State of Maharashtra*, (1977) 4 SCC 551: 1978 SCC (Cri) 10: 1978 Cri LJ 165: AIR 1978 SC 47.
27. *Bhola* v. *State of U.P.*, 1979 Cri LJ 718 (All); *State of U.P.* v. *Karam Singh*, 1988 Cri LJ 1434 (All).
28. *R. Shakuntala* v. *Roshanlal Agarwal*, 1985 Cri LJ 68 (Bom); *Prashant Kumar* v. *Mancharlal Bhagatram Bhatia*, 1988 Cri LJ 1463 (Bom).
29. (1977) 4 SCC 551: 1978 SCC (Cri) 10: 1978 Cri LJ 165: AIR 1978 SC 47 at 53.
30. *R. Shakuntala* v. *Roshanlal Agarwal*, 1985 Cri LJ 68 at 76 (Bom).
31. *Bindbasni* v. *State of U.P.*, 1976 Cri LJ 1660, 1662 (All).

temporary nature which do not decide or touch the important rights or liabilities of the parties. For instance, orders summoning witnesses, adjourning cases, granting or cancelling bail, calling for reports and such other steps in the aid of the pending proceeding are all interlocutory orders.[32] It may however be noted that the expression ''interlocutory order'' should not be equated as invariably being converse of the expression 'final order'. There may be an order passed during the course of a proceeding which may not be 'final' yet it may not be an interlocutory order — pure or simple. Some kind of order may fall in between the two, and the bar in Section 397(2) is not meant to be attracted to such kinds of intermediate orders. It is, according to the Supreme Court, neither advisable nor possible to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which fall in between the two[33]. An order rejecting the plea of the accused on a point which when accepted, will conclude the particular proceeding, will not be considered as an interlocutory order within the meaning of Section 397(2)[34].

According to the Supreme Court, the term 'interlocutory order' as used in Section 397(2) has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial because the bar contained in that section would apply to a variety of cases coming up before the courts not only being offences under the Penal Code but under numerous Acts. If, therefore, the right of revision was to be barred, the provision containing the bar must be confined within the four corners of the spirit and the letter of the law. In other words, the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi-final[35].

If an order is directed against a person who is not a party to the inquiry or trial, and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, then for such a person the order could not be said to be interlocutory. An order may be conclusive with reference to the stage at which it is made, and it may also be conclusive as to a person, who is not a party to the enquiry or trial, against whom it is directed.[36]

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32. *Amar Nath* v. *State of Haryana*, (1977) 4 SCC 137: 1977 SCC (Cri) 585: 1977 Cri LJ 1891; see also *Hasmukh J. Jhaveri* v. *Shella Dadlani*, 1981 Cri LJ 958, 962 (Bom).
33. *Madhu Limaye* v. *State of Maharashtra*, (1977) 4 SCC 551: 1978 SCC (Cri) 10: 1978 Cri LJ 165.
34. *Madhu Limaye* v. *State of Maharashtra*, (1977) 4 SCC 551: 1978 SCC (Cri) 10: 1978 Cri LJ 165; *Ankaputtaswamy* v. *Papegowda*, 1978 Cri LJ 1233 (Kant); *Amar Nath* v. *State of Haryana*, (1977) 4 SCC 137: 1977 SCC (Cri) 585: 1977 Cri LJ 1891; *Abdul Jabbar Khan* v. *Kailash Chandra*, 1982 Cri LJ 128, 130 (Raj).
35. *V.C. Shukla* v. *State through CBI*, 1980 Supp SCC 92: 1980 SCC (Cri) 695, 707: 1980 Cri LJ 690.
36. *Parmeshwari Devi* v. *State*, (1977) 1 SCC 169: 1977 SCC (Cri) 74, 77: 1977 Cri LJ 245.

An order framing a charge has not been considered as an "interlocutory order" within the meaning of Section 397(2)[37]. An order rejecting an application under Section 311 for recalling witnesses is an interlocutory order and hence revision is not maintainable against it.[38] In *Velmiki Faleiro* v. *Lauriana Fernandes*[39], the Bombay High Court held that an order directing issuance of process is not interlocutory in nature. However in *Vardhman Stamping (P) Ltd.* v. *Sakura Seimitsu (I) Ltd.*[40], the Gujarat High Court seems to take the opposite view.

The order tendering pardon is a final order so far as the status and liability of the approvers are concerned. The other accused are clearly aggrieved by the order, and as such an order is not interlocutory in the context of Section 397(2), they can go in revision against the same[41].

It may be noted that the restriction on revisional power in relation to interlocutory order is not applicable in respect of interlocutory order passed without jurisdiction. The reason is obvious. The object of enacting Section 397(2) was that by coming up in revision against interlocutory orders there would be delay in the disposal of criminal proceedings resulting in great harassment to the litigants. If interlocutory orders passed without jurisdiction cannot be interfered with by the revisional court at any earlier stage, then the harassment would be much greater and would be more oppressive. Interlocutory orders which are without jurisdiction and are nullities, have no existence in the eye of law. The litigants cannot escape harassment merely by ignoring them and that is why the jurisdiction of the High Court is invoked to quash such orders. Section 397(2) will have no application to such interlocutory orders which though have the form of interlocutory orders are no orders at all.[42]

A question may arise as to whether the bar put by Section 397(2) on the revision of an interlocutory order can be circumvented by the aggrieved

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37. *Madhu Limaye* v. *State of Maharashtra*, (1977) 4 SCC 551: 1978 SCC (Cri) 10: 1978 Cri LJ 165; *V.C. Shukla* v. *State through CBI*, 1980 Supp SCC 92: 1980 SCC (Cri) 695: 1980 Cri LJ 690; *Mohan Lal Devdanbhai Chokshi* v. *J.S. Wagh*, 1981 Cri LJ 454, 460 (Bom); *Dattatraya Narayan Samant* v. *State of Maharashtra*, 1982 Cri LJ 1025, 1040 (Bom); *Sarojini Amma* v. *Sarojini*, 1988 Cri LJ 1362 (Ker); for contrary views, see *Jayaprakash* v. *State*, 1981 Cri LJ 460 (Ker); *State* v. *Mohd. Zaman*, 1981 Cri LJ 783 (J&K); *S.K. Mahajan* v. *Municipality Jammu*, 1982 Cri LJ 646, 653 (J&K); *Ramchandra* v. *State of M.P.*, 1989 Cri LJ 162 (MP); *Bhagabat Prasad Mohanty* v. *Kalanji Mohanty*, 1989 Cri LJ 410 (Ori); *N.K. Narayanan* v. *V. Vidyadharan*, 1991 Cri LJ 780 (Ker).
38. *Sanjay* v. *State of Haryana*, 2005 Cri LJ 287 (P&H).
39. 2005 Cri LJ 2498 (Bom).
40. 2007 Cri LJ 273 (Guj).
41. *R. Ravindran Nair* v. *Supdt. of Police*, 1981 Cri LJ 1424, 1426 (Ker).
42. *Bhima Naik* v. *State*, 1975 Cri LJ 1923, 1930 (Ori); see also *Deena Nath* v. *Daitari Charan*, 1975 Cri LJ 1931, 1932 (Ori); *Satyabrata* v. *Jarnal Singh*, 1976 Cri LJ 446, 448 (Ori); *Shanmughasundaram Pillai* v. *State*, 1983 Cri LJ 115, 119 (Mad).

party by invoking the inherent powers of the High Court under Section 482.[43] Exceptions apart, the answer shall be in the negative. If the order assailed is purely of an interlocutory character, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power of the High Court.[44] But such cases would be few and far between. One such case would be the desirability of the quashing of the criminal proceedings initiated illegally, vexatiously or as being without jurisdiction.[45]

Sub-section (3) of Section 397 lays down that if a revision application has been made by any person either to the High Court or to the Sessions Judge under Section 397(1), no further application by the same person shall be entertained by the other of them. Therefore once the Sessions Judge has passed an order on an application for revision this order is to be treated as final and no second revision petition lies before the High Court[46]. The decision of the Sessions Judge, if he is approached first, is made final and conclusive (except in case of *suo motu* revision about which it *prima facie* appears that the powers of the High Court are not intended to be affected).[47] A person aggrieved by the Sessions Judge's decision would have no right to approach the High Court in revision. Such being the position under the (new) Code any rule or practice which requires such a person to first approach the Sessions Judge before going to the High Court would be out of place.[48] However in a later decision, the Bombay High Court has held that such a rule or practice is not ineffective and purposeless and an aggrieved

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43. S. 482 is as follows: "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

44. *See* discussions in *Charanjit Singh* v. *Gursharan Kaur*, 1990 Cri LJ 1264 (P&H); *H.R. Rawal* v. *Nidhi Prakash*, 1990 Cri LJ 961 (All); *Devendra Dutt* v. *State*, 1990 Cri LJ 177 (Del).

45. *Madhu Limaye* v. *State of Maharashtra*, (1977) 4 SCC 551: 1978 SCC (Cri) 10, 15: 1978 Cri LJ 165; *Municipal Corpn. of Delhi* v. *Ram Kishan Rohtagi*, (1983) 1 SCC 1: 1983 SCC (Cri) 115, 118: 1983 Cri LJ 159.

46. *Chhail Das* v. *State of Haryana*, 1975 Cri LJ 129, 130 (P&H); see also *Ramachandra Puja Panda Samant* v. *Jambeswar Patra*, 1975 Cri LJ 1921 (Ori); *Deena Nath* v. *Daitari Charan*, 1975 Cri LJ 1931, 1932 (Ori).

47. *Jagir Singh* v. *Ranbir Singh*, (1979) 1 SCC 560: 1979 SCC (Cri) 348, 352, 353: 1979 Cri LJ 318: *Chhedilal* v. *Kamla*, 1978 Cri LJ 50 (All); *Swetamber Jain Sampraday* v. *Digamber Amnay*, 1982 Cri LJ 701, 702 (Raj); *Baban* v. *Sambamurthy*, 1980 Cri LJ 248 (AP).

48. *Satyanarayan* v. *Kantilal*, 1976 Cri LJ 1806, 1812 (Guj). See also *P. Abbulu* v. *State*, 1975 Cri LJ 139 (AP); *Kesavan Sivan Pillai* v. *Sreedharan Rajamohan*, 1978 Cri LJ 743 (Ker) (FB).

party cannot directly invoke the revisional jurisdiction of the High Court leapfrogging the Sessions Judge.[49]

It may however be noted that the restriction on further revision as contained in Section 397(3) is confined to a second revision application filed by the same person only. In Section 397(3) the crucial words are "no further application by the *same person* shall be entertained by the other of them". An illustration would make the position clear. A proceeding under Section 145 between *X* and *Y* terminated before the magistrate in favour of *X*. The criminal revision of *Y* before the Sessions Judge was dismissed. A criminal revision before the High Court at the instance of *Y* shall not be entertained. In the same illustration if *Y*'s criminal revision before the Sessions Judge was allowed, a criminal revision to the High Court against the order of the Sessions Judge at the instance of *X* is maintainable. This is for the simple reason that the second criminal revision before the High Court is not at the instance of such person who filed the criminal revision before the Sessions Judge. On the language of Section 397(3) the conclusion is irresistible that a second revision at the instance of a successful party before a magistrate who lost the revision before the Sessions Judge would lie to the High Court[50].

25.4. Statement by Metropolitan Magistrate of grounds of his decision to be considered by the court of revision.—When the record of any trial held by a metropolitan magistrate is called for by the High Court or court of session under Section 397, the magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the court shall consider such statement before overruling or setting aside the said decision or order. (Section 404)

According to Section 355[51], a metropolitan magistrate is required to record specified particulars instead of writing a judgment; and in all cases in which an appeal lies from the final order either under Section 373 (Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour) or under Section 374(3) (i.e. appeals from convictions) the metropolitan magistrate is to record a brief statement of the reasons for the decision. The statement submitted under the above Section 404 supplements the meagre record of the case and helps the court of revision to consider whether the decision of the magistrate was justified.

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49. *Arunkumar* v. *Chandanbai*, 1980 Cri LJ 601, 604 (Bom).
50. *Ramachandra Puja Panda Samant* v. *Jambeswar Patra*, 1975 Cri LJ 1921, 1923 (Ori); *Inayatullah Rizvi* v. *Rahimatullah*, 1981 Cri LJ 1398 (Bom); *Wajid Mirza* v. *Mohd. Ali Ahmed*, 1982 Cri LJ 890, 895-96 (AP).
51. See *supra* para 23.3.

25.5. Power to order inquiry.—Section 398 provides as follows:

398. Power to order inquiry.—On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

The power of the Sessions Judge, under Section 398 is to examine any record under Section 397 or otherwise and such power is exercisable to proceedings pending or concluded at the pre-charge stage. While records called for to exercise powers of revision under Section 397 are for the purpose of satisfying the court as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings, the power under Section 398 is not co-extensive with Section 397 but extends far wider as the record can ''otherwise'' be examined by the Sessions Judge without recourse to Section 397.[52]

It is plain from the above section that so far as the orders of dismissal under Section 203[53] or sub-section(4) of Section 204[54] of the Code and of discharge under the relevant provisions of the Code are concerned, the bar provided in Section 397(2) against revision in relation to interlocutory orders has been removed.[55] So long as a dismissal of a complaint could not be said in the eye of law to be one falling under Section 203 [or Section 204(4)] the jurisdiction of the Sessions Judge or the High Court under Section 398 would not come into play.[56]

The words ''any person accused of an offence'' indicate that the discharge relates to a person who has been accused of an offence. So these words do not include a person against whom proceedings have been taken under Sections 109, 110, 125, 133, and 145.

The proviso is imperative and requires that no order for further inquiry should be passed without giving an opportunity to the accused person to show cause why further inquiry should not be directed. It may be noted that the proviso applies only to cases where the accused has been discharged; it

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52. *Gurbaksh Singh* v. *Vir Bhan*, 1980 Cri LJ 1154, 1156 (P&H).
53. See *supra* para 11.3.
54. See *supra* para 11.4.
55. *P.T. Doddiah* v. *Hanumanthappa*, 1976 Cri LJ 1437, 1438 (Kant).
56. *H. Basavaiah* v. *H.G. Krishnappa*, 1973 Cri LJ 1318, 1319 (Mys).

does not apply to the dismissal of a complaint. If a magistrate, on considering the facts, has found that there is no ground for proceeding against any person and therefore dismissed the complaint summarily, there is hardly any reason for the revising court to call anyone to court as an accused or as a respondent until of course, after a further inquiry has been made and that inquiry justifies the issuing of process.[57]

The term 'further inquiry' in Section 398 has come to acquire a technical meaning. It does not mean 'fresh preliminary enquiry' but only the reappraisal of the very evidence which was examined prior to the passing of the order, which was set aside in revision or any other evidence cited in the complaint but not examined earlier, but examined after the remand.[58]

It may however be noted that once a case is before the court of session in its revisional jurisdiction then the power under both the Sections 398 and 399 can be exercised by it and it is immaterial and academic to investigate as to which specific provision has been actually invoked.[59]

25.6. Sessions Judge's powers of revision.—Section 399 provides as follows:

399. Sessions Judge's powers of revision.—(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Under Section 399(1) the Sessions Judge, in the case of any proceeding the record of which has been called for by himself under Section 397(1), may exercise all or any of the powers which are exercisable by the High Court under Section 401(1). As will be seen later in para 25.8, Section 401(1) enables the High Court to exercise in its revisional jurisdiction any of the powers conferred on a court of appeal by Sections 386, 389, 391 etc.[60] And in this view the Session Court does not have the power to order

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57. *See* 41st Report, p. 288, para 32.10.
58. *Gurdial Singh* v. *Kartar Singh*, 1980 Cri LJ 955 (P&H).
59. *Bal Kishan Jain* v. *Indian Overseas Bank*, 1981 Cri LJ 796, 802 (P&H).
60. For the contents of Ss. 386, 389, 390, 391, see *supra* paras 24.12, 24.10, 24.11.

summoning of a person discharged by the magistrate[61]. It is interesting to note that though the Sessions Judge has no power to entertain any appeal against an order of acquittal under Section 378, or for enhancement of the sentence under Section 377, he can entertain applications for revision against acquittal or for enhancement of sentence from the complainant or from any person or the aggrieved party. In such cases, the Sessions Judge can invoke revisional jurisdiction even *suo motu* without any application as such from any person. The Kerala High Court, however, in *T. Jayarajan* v. *P.R. Mohammed*[62] explained that while under Section 401 the High Court can exercise its revisional powers *suo motu*, the Sessions Court under Section 399 has powers of revision on being approached by a party. As such, the Sessions Court will have power to enhance sentence only on the request of the complainant.

The limitations on the exercise of the revisional powers of the High Court as contained in sub-sections (2), (3) and (4) of Section 401, and the enabling provision for treating the application for revision as a petition of appeal under certain circumstances as contained in Section 401(5), have all been made applicable by Section 399(2) to every proceeding by way of revision commenced before a Sessions Judge under Section 399(1). Section 401 will be discussed in detail in para 25.8.

As seen earlier, Section 397(3) provides that if an application under Section 397 to call for the records of an inferior criminal court has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. Under Section 399 the Sessions Judges have been given the power to finally dispose of revision cases, the records of which have been called for by them. The motivation of the provisions appears to be to provide an easy remedy and secure expedition in the disposal of cases.[63] So Section 399(3) provides that where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such a person shall be final and no further proceedings by way of revision at the instance of such person shall be entertained by the High Court. The effect of these two provisions is that, while a person has the choice to move either the High Court or the Sessions Judge under Section 397, if he chooses to go before the Sessions Judge he cannot thereafter go before the High Court even if the Sessions Judge rejects his revision application. Therefore the rule of practice under the old Code that except under exceptional circumstances, the High Court would not entertain a revision application unless that Sessions Judge was

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61. *Baldev Singh* v. *State of Haryana*, 1988 Cri LJ 534 (P&H).
62. 1999 Cri LJ 1856 (Ker); also see *Mahendrabhai R. Patel* v. *Ambalal P. Patel*, 2005 Cri LJ 840 (Guj).
63. *Wajid Mirza* v. *Mohd. Ali Ahmed*, 1982 Cri LJ 890, 895-96 (AP).

moved in the first instance, is inconsistent with the scheme of the new Code i.e. the present Code; any insistence on following the old rule or practice hereafter would result in the destruction of the right of a person to move the High Court under Section 397. The rule of practice followed by many High Courts cannot any longer be followed in view of Sections 397(3) and 399(3).[64] However the Bombay High Court has held that such a rule or practice is not ineffective and purposeless and an aggrieved party cannot directly invoke the revisional jurisdiction of the High Court leapfrogging the sessions judge.[65]

25.7. Powers of revision of Additional Sessions Judge.—An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge [Section 400].

The powers given to Additional Sessions Judge under Section 400 include the power to dispose of an application for condoning the delay in a case transferred to him by the Sessions Judge, even if such an application is filed after the transfer.[66]

25.8. High Court's powers of revision.—The powers of revision and the limitations on such powers of the High Court are contained in Section 401 which reads as follows:

401. High Court's powers of revision.—(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a court of appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is

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64. *P. Abbulu* v. *State*, 1975 Cri LJ 139, 140-41 (AP); *Kesavan Sivan Pillai* v. *Sreedharan Rajamohan*, 1978 Cri LJ 743 (Ker) (FB); *Brahmachari Satyanarayan* v. *Kantilal L. Dave*, 1976 Cri LJ 1806 (Guj).
65. *Arunkumar* v. *Chandanbai*, 1980 Cri LJ 601, 604 (Bom).
66. *K.M. Kunjukoru Chinnappan* v. *Neelakantan Chettiar*, 1981 Cri LJ 1312, 1313 (Ker).

Mohd. Hashim v. State of U.P.

(2017) 2 SCC 198

Bench : Dipak Misra and Amitava Roy, JJ.

Dipak Misra, J.

2. Respondent Nos. 2 to 10 were prosecuted for the offences punishable Under Sections 498-A and 323 of the Indian Penal Code (Indian Penal Code) and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (for short, 'the 1961 Act'). The Respondent Nos. 2 and 3 were convicted Under Section 498-A

Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1,000/- (Rupees one thousand only) each with the default clause. The other accused, i.e., Respondent Nos. 4 to 10 were convicted for the offence punishable Under Section 498-A of the Indian Penal Code and sentenced to undergo simple imprisonment of six months and pay a fine of Rs. 1,000/- (Rupees one thousand only) each with the default clause. All the accused persons were convicted Under Section 323 of the Indian Penal Code and Section 4 of the 1961 Act and sentenced to undergo rigorous imprisonment for six months on the first count and for a period of one year on the second score. They were also sentenced to pay fine with the stipulation of the default clause.

3. The Respondents challenged the judgment of conviction and order of sentence before the learned Sessions Judge, Unnao, U.P. in Criminal Appeal No. 55 of 2013 who, in course of hearing, taking note of the fact that the counsel appearing for the Appellants had abandoned the challenge pertaining to the conviction but only confined the argument seeking benefit Under Section 4 of the Probation of Offenders Act, 1958 (for short, 'the PO Act'), extended the benefit as prayed for.

4. Being grieved by the aforesaid judgment of the learned appellate Judge, the informant preferred Criminal Revision No. 252 of 2013 before the High Court. In its assail, the counsel for the informant placed reliance on *Shyam Lal Verma v. Central Bureau of Investigation*, *State Through SP, New Delhi v. Ratan Lal Arora* (2004) 4 SCC 590, and State represented by *Inspector of Police, Pudukottai, T.N. v. A. Parthiban* (2006) 11 SCC 473 to buttress the submission that the benefit Under Section 4 of the PO Act could not have been extended to the convicts regard being had to the nature of the offences and the punishment provided for the same. The High Court repelling the argument concurred with the opinion expressed by the learned Sessions Judge.

6. There is no dispute over the fact that the Respondents were convicted as has been stated earlier. The question is **whether the approach of the learned appellate Judge which have been concurred by the High Court is legally sustainable**.

7. In this context, it is pertinent to appreciate the scheme of the PO Act. Section 3 of the PO Act confers power on the Court to release certain offenders after admonition.

8. Section 4 of the PO Act deals with the power of Court to release certain offenders on probation on good conduct.

9. Section 6 of the PO Act stipulates restrictions on imprisonment of offenders under twenty-one years of age.

10. It is submitted by the learned Counsel for the Appellant that as the Respondents were convicted Under Section 498-A of Indian Penal Code and Section 4 of the 1961 Act, the Respondents could not have been conferred the benefit of probation on good conduct, for Section 4 of the 1961 Act prescribes a minimum sentence. Additionally, it is also canvassed by him that even if the said provision is applicable, the Court has not considered the nature of offences and other requisite aspects to extend the benefit under the said provision.

11. We shall deal with the first aspect, that is, **whether Section 4 of the 1961 Act prescribes a minimum sentence**, first. In *Shyam Lal Verma* (supra), a two-Judge Bench, after referring to Ratan Lal Arora (supra), has held thus:

It is not in dispute that the issue raised in this appeal has been considered by this Court in State Through SP, New Delhi v. Ratan Lal Arora (supra) wherein in similar circumstances, this Court held that since Section 7 as well as Section 13 of the Prevention of Corruption Act provide for a minimum sentence of six months and one year respectively in addition to the maximum sentences as well as imposition of fine, in such circumstances claim for granting relief under the Probation of Offenders Act is not permissible. In other words, in cases where a specific provision prescribed a minimum sentence, the provisions of the Probation Act cannot be invoked. Similar view has been expressed in State Represented by Inspector of Police, Pudukottai, T.N. v. A. Parthiban (supra).

…

16. In Ratan Lal Arora (supra) the learned single Judge of the Delhi High Court while upholding conviction of the accused under the Prevention of Corruption Act, 1988 further held him to be entitled to the benefits of Section 360 of the Code of Criminal Procedure. The Court adverted to Section 7 and Section 13 of the Prevention of Corruption Act which provide for minimum sentence of six months and one year respectively in addition to the maximum sentence as well as imposition of fine. Reference was made to Section 28 that stipulates that the provisions of the Act shall be in addition to and not in derogation of any other law for the time being in force. Reliance was placed on the decision in Bahubali (supra) while interpreting the said provision and relying on the authority in Bahubali (supra) the Court ruled that Section 28 of the Prevention of Corruption Act had a tenor of Section 43 of the Defence of India Act. In that context, it observed:

Unlike the provisions contained in Section 5(2) proviso of the old Act providing for imposition of a sentence lesser than the minimum sentence of one year therein for any "special reasons" to be recorded in writing, the Act did not carry any such power to enable the court concerned to show any leniency below the minimum sentence stipulated. Consequently, the learned Single Judge in the High Court committed a grave error of law in extending the benefit of probation even under the Code.

17. The said principle has been reiterated in State represented by Inspector of Police, Pudukottai, T.N. v. A. Parthiban MANU/SC/8540/2006 : (2006) 11 SC 473.

18. The issue that arises for consideration is **whether minimum sentence is provided for offences under which the Respondents have been convicted**. On a plain reading of Section 323 and 498-A, it is quite clear that there is no prescription of minimum sentence. Learned Counsel for the Appellant would contend that Section 4 of the 1961 Act provides for minimum punishment. To appreciate the said contention, the provision is reproduced below:

4. Penalty for demanding dowry.--If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

19. Learned Counsel would submit that the legislature has stipulated for imposition of sentence of imprisonment for a term which shall not be less than six months and the proviso only states that sentence can be reduced for a term of less than six months and, therefore, it has to be construed as minimum sentence. The said submission does not impress us in view of the authorities in Arvind Mohan Sinha (supra) and Ratan Lal Arora (supra). We may further elaborate that when the legislature has prescribed minimum sentence without discretion, the same cannot be reduced by the Courts. In such cases, imposition of minimum sentence, be it imprisonment or fine, is mandatory and leaves no discretion to the court. However, sometimes the legislation prescribes a minimum sentence but grants discretion and the courts, for reasons to be recorded in writing, may award a lower sentence or not award a sentence of imprisonment. Such discretion includes the discretion not to send the accused to prison. Minimum sentence means a sentence which must be imposed without leaving any discretion to the court. It means a quantum of punishment which cannot be reduced below the period fixed. If the sentence can be reduced to nil, then the statute does not prescribe a minimum sentence. A provision that gives discretion to the court not to award minimum sentence cannot be equated with a provision which prescribes minimum sentence. The two provisions, therefore, are not identical and have different implications, which should be recognized and accepted for the PO Act.

20. Presently, we shall advert to the second plank of the submission advanced by the learned Counsel for the Appellant. In Rattan Lal v. State of Punjab MANU/SC/0072/1964: AIR 1965 SC 444. Subba Rao, J., speaking for the majority, opined thus:

The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that having regard

to the circumstances of the case; including the nature of the offence and the character of the offenders, it is not desirable to deal with them Under Sections 3 and 4 of the Act.

We have reproduced the aforesaid passage to understand the philosophy behind the Act.

21. In this regard, it is also seemly to refer to other authorities to highlight how the discretion vested in a court under the PO Act is to be exercised. In Ram
Prakash v. State of Himachal Pradesh MANU/SC/0212/1972 : AIR 1973 SC 780, while dealing with Section 4 of the PO Act in the context of the Prevention of Food Adulteration Act, 1954, the Court opined that the word 'may' used in Section 4 of the PO Act does not mean 'must'. On the contrary, as has been held in the said authority, it has been made clear in categorical terms that the provisions of the PO Act distinguishes offenders below 21 years of age and those above that age and offenders who are guilty of committing an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. Thereafter, the Court has proceeded to observe:

While in the case of offenders who are above the age of 21 years, absolute discretion is given to the Court to release them after admonition or on probation of good conduct in the case of offenders below the age of 21 years, an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them Under Sections 3 and 4 of the Act. (Ratan Lal v. State of Punjab (supra) and Ramji Missir v. the State of Bihar AIR 1963 SC 1088).

22. Be it noted, in the said case, keeping in view the offence under the Prevention of Food Adulteration Act, 1954, the Court declined to confer the benefit Under Section 4 of the PO Act.

23. We have referred to the aforesaid authority to stress the point that the Court before exercising the power Under Section 4 of the PO Act has to keep in view the nature of offence and the conditions incorporated Under Section 4 of the PO Act. Be it stated in Dalbir Singh v. State of Haryana and Ors. MANU/SC/0345/2000 : AIR 2000 SC 1677 it has been held that Parliament has made it clear that only if the Court forms the opinion that it is expedient to release the convict on probation for the good conduct regard being had to the circumstances of the case and one of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence". The Court has further opined that though the discretion as been vested in the court to decide when and how the court should form such opinion, yet the provision itself provides sufficient indication that releasing the convicted person on probation of good conduct must appear to the Court to be expedient.

9. In State of Gujarat v. Jamnadas G. Pabri AIR 1974 SC 2233 a three-Judge Bench of this Court has considered the word "expedient". Learned Judges have observed in para 21 thus:

Again, the word 'expedient' used in this provisions, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view', 'practical and efficient'; 'politic'; 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right' (see Webster's New
International Dictionary*).*

10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence...". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct.

24. We have highlighted these aspects for the guidance of the appellate court as it has exercised the jurisdiction in a perfunctory manner and we are obligated to say that the High Court should have been well advised to rectify the error.

25. At this juncture, learned Counsel for the Respondents would submit that no arguments on merits were advanced before the appellate court except seeking release under the Po Act. We have made it clear that there is no minimum sentence, and hence, the provisions of the PO Act would apply. We have also opined that the court has to be guided by the provisions of the PO Act and the precedents of this Court. Regard being had to the facts and circumstances in entirety, we are also inclined to accept the submission of the learned Counsel for the Respondents that it will be open for them to raise all points before the appellate court on merits including seeking release under the PO Act.

26. Resultantly, the appeal is allowed, the judgment and order passed by the High Court and the appellate court are set aside and the matter is remitted to the appellate court for disposal in accordance with law.

Gurdev Singh v. Surinder Singh
2014(9) SCALE 556

Judges/Coram: *Ranjana Prakash Desai and N.V. Ramana, JJ*

1. The Petitioner and Respondents 1 and 2 are brothers. Respondents 1 and 2 filed complaint under Sections 420, 467, 468, 471, 120B of the Indian Penal Code ("the IPC") in the Court of Additional Chief Judicial Magistrate, Patiala ("the Addl. C.J.M.") being Complaint No. 55 dated 14/6/2008 against the Petitioner and Respondent 3. In the complaint, the complainants alleged that an agreement of exchange of land was entered into between the complainants and the Petitioner wherein land measuring 12 kanals, 3 marlas i.e. 243/852 share out of land measuring 42 kanals 12 marlas belonging to the complainants was transferred to the Petitioner and in lieu of this, land belonging to the Petitioner measuring 12 kanals 3 marlas i.e. 243/730 share out of total land measuring 36 kanals 10 marlas was transferred to the complainants. On execution of the said agreement, the possession of the land was also exchanged on 22/3/2005. Accordingly and as per the exchange agreement, Respondent 3 recorded the exchange mutation in the revenue record vide Rapat No. 616 dated 30/4/2005 and Exchange Mutation No. 14599 was sanctioned by the Tehsildar, Patiala. According to the complainants, Respondent 3 and the Petitioner hatched a conspiracy and tampered with the revenue record of village Sanaur, Tehsil and District Patiala in respect of the aforesaid land. According to the complainants, Respondent 3 and the Petitioner wrote the exchanged area as 14 kanals 3 marlas instead of 12 kanals 3 marlas causing wrongful gain to the Petitioner and wrongful loss to them. According to the complainants, on the basis of the illegal and fraudulent entries made by Respondent 3 in the revenue record, the Petitioner is trying to grab 2 kanals of land from the complainant. The Petitioner and Respondent 3 have, therefore, played a fraud upon the complainants and cheated them. According to the complainants, though they approached the police, the police did not take any action. The complainants, therefore, filed the present complaint before the Addl. C.J.M. as aforesaid.

2. By order dated 19/1/2009, the Addl. C.J.M., dismissed the complaint observing that the complainants should approach the revenue authorities for correction of revenue record. The complainants carried, a revision to the Additional Sessions Judge, Patiala. By order dated 6/7/2010, the Additional Sessions Judge, Patiala set aside order dated 19/1/2009 and remanded the complaint to the Addl. C.J.M. with a direction to hold further inquiry in the complaint filed by the complainants. The Addl. C.J.M. by order dated 24/2/2011, holding that there are sufficient grounds to proceed against both the Petitioner and Respondent 3, issued summoning order. Being aggrieved by the remand order passed by the Additional Sessions Judge, Patiala and the summoning order passed by the Addl. C.J.M., the Petitioner filed a petition under Section 482 of the Code of Criminal Procedure ("the Code") for quashing of Complaint No. 55 dated 14/6/2008; remand order dated 6/7/2010 passed by the Additional Sessions Judge and the summoning order dated 24/2/2011 passed by the Addl. C.J.M. By the impugned order, the Punjab & Haryana High Court dismissed the said petition. Hence, this special leave petition.

3. Before the High Court, only two submissions were advanced. It was argued that since the matter was remitted to the Addl. C.J.M., it was incumbent upon the Addl. C.J.M. to record fresh evidence before passing summoning order. This contention was rejected by the High Court observing that the zimni orders stated that fresh preliminary evidence was led by the complainants and the summoning order was not passed on the basis of the material which was already on record. The High Court also placed reliance on the judgment of this Court in Subrata Das v. State of Jharkhand and Anr. MANU/SC/0887/2010: AIR 2011 SC 177 where this Court has held that direction to hold further enquiry does not necessarily oblige the Addl. C.J.M. to record further evidence. The relevant portion of the said judgment reads thus:

"The matter as noticed by us earlier had been remanded back to the Chief Judicial Magistrate to hold a further enquiry. That direction did not necessarily oblige the Magistrate to record any further evidence in the case. The nature of the inquiry was in the discretion of the Magistrate which may or may not have included recording of further evidence on behalf of the complainant. The Magistrate could without recording any further evidence in the matter reappraise the averments made in the complaint and the material already on record to determine whether a prima facie case was made out against the accused persons. In as much as the Magistrate in the instant case summoned the witnesses and examined them afresh, he may have gone beyond what was legally necessary to do but that is no reason to hold that the recording of evidence by the Magistrate as a part of the further enquiry

directed by the High Court would vitiate the proceedings before him or the conclusion drawn on the basis of any such enquiry. So long as the Magistrate was satisfied that a prima facie case had been made out, he was competent to issue summons to the accused. All told, the alleged error sought to be pointed out by the Appellant is not of a kind that would persuade us to interfere with the proceedings at this stage. In the result this appeal fails and is hereby dismissed."

The High Court further held that preliminary evidence led in the shape of C-1 and C-2 as well as the documents Annexures P-1 to P-5 prima facie disclose the commission of offences punishable under Sections 420, 467, 468, 471, 120B of the IPC and whether wrong entry in the revenue record was mala fide or bona fide is an issue to be determined by the Addl. C.J.M. during the course of trial.

4. Mr. Luthra, learned senior counsel for the Petitioner raised only one contention before us. He submitted that the Addl. C.J.M. dismissed the complaint on 19/1/2009. The complainants carried a revision to the Additional Sessions Judge. By order dated 6/7/2010, the Additional Sessions Judge set aside the order dated 19/1/2009 and remanded the complaint to the Addl. C.J.M. with a direction to hold further enquiry. Counsel submitted that the Petitioner/accused was, however, not given a hearing at that stage, which was a must. In this connection, he relied on Manharibhai Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and Ors. MANU/SC/0819/2012: (2012) 10 SCC 517. Counsel submitted that it is therefore necessary to quash the proceedings as they are vitiated on account of failure to give a hearing to the Petitioner/accused by the revisional court while setting aside the dismissal of the complaint.

5. We find substance in this submission. Dismissal of the complaint terminates criminal proceedings against the accused. If the complainant carries the matter further by filing a revision and the Sessions Court sets aside the dismissal order and remands the matter to the Addl. C.J.M. for fresh enquiry, the complaint is revived. In this connection, it is necessary to refer to Section 401 of the Code which lays down the High Court's powers of revision. Subsection (2) thereof states that no order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence. Section 399 of the Code refers Sessions Judge's powers of revision. Sub-section (2) thereof states that where any proceeding by way of revision is commenced before a Sessions Judge under Subsection (1), the provisions of Subsections (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and reference in the said Subsections to the High Court shall be construed as reference to the Sessions Judge.

6. Thus, it was obligatory on the Additional Sessions Judge to hear the accused before setting aside the order of dismissal of complaint in his revisional jurisdiction. Of course, once the matter is remanded to the Addl. C.J.M., the accused will have no right of hearing because at pre-process stage, the law does not give him any such right. It is only in the aforementioned situation that the accused is entitled to a hearing. In Manharibhai Muljibhai Kakadia, this Court considered the question whether a suspect is entitled to hearing by the revisional court in a revision filed by the complainant challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code. This Court considered the relevant provisions of the Code and observed as under:

"Section 202 of the Code has twin objects; one, to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate himself may hold an inquiry under Section 202 of the Code or direct an investigation to be made by a police officer. The dismissal of the complaint under Section 203 is without doubt a preissuance of process stage. The Code does not permit an accused person to intervene in the course of inquiry by the Magistrate under Section 202.

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The legal position is fairly well-settled that in the proceedings under Section 202 of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, up to the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the

Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

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The dismissal of complaint by the Magistrate under Section 203 --although it is at preliminary stageneverthelessresults in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

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If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process."

7. In view of this clear legal position, only on the aforementioned ground, we set aside the impugned order. Needless to say that order dated 6/7/2010 passed by the Additional Sessions Judge, Patiala setting aside order dated 19/1/2009 passed by the Addl. C.J.M. and remanding the complaint to the Addl. C.J.M. with a direction to hold further enquiry is set aside. We direct the Additional Sessions Judge, Patiala to hear the revision application afresh after hearing the Petitioner/accused and pass appropriate order at the earliest and in any event within two months from today. Needless to say further that in view of the above, summoning order dated 24/2/2011 passed by the Addl. C.J.M. is also set aside. We, however, make it clear that we have not quashed Complaint No. 55 dated 14/6/2008 nor have we expressed any opinion on the view expressed by the High Court on the question whether if a complaint is remanded to the Addl. C.J.M. for enquiry, fresh evidence must necessarily be taken. In fact, on the merits of the case, we have expressed no opinion. The special leave petition is disposed of in the aforestated terms.

Subhash Chand v. State (Delhi Administration)

Judges/Coram:
Aftab Alam and Ranjana Prakash Desai, JJ.

Ranjana Prakash Desai, J.

2. This appeal, by special leave, is directed against judgment and order dated 07/01/2011 passed by the High Court of Delhi in Criminal Misc. Case No. 427 of 2009 whereby the High Court dismissed the petition filed by the Appellant holding that an appeal filed by the State against an order of acquittal shall lie to the Sessions Court Under Section 378(1) of the Code of Criminal Procedure, 1973 (for short, **"the Code"**) and not Under Section 378(4) of the Code to the High Court.

3. The Appellant is the supplier-cummanufacturer of the food article namely Sweetened Carbonated Water. He is carrying on business in the name and style of M/s. Subhash Soda Water Factory. On 6/6/1989 at about 4.15 p.m., one P.N. Khatri, Food Inspector, purchased a sample of sweetened carbonated water for analysis from one Daya Chand Jain, Vendor-cum-Contractor of Canteen at Suraj Cinema, Dhansa Road, Najafgarh, Delhi. After following the necessary procedure, the sample was sent to the Public Analyst for analysis. On analysis, the Public Analyst opined that the sample does not conform to the prescribed standard. After conclusion of the investigation, the Respondent-State through its Local Health Authority-P.K. Jaiswal filed a Complaint bearing No. 64 of 1991 against the Appellant and Daya Chand in the Court of the Metropolitan Magistrate, New Delhi alleging that the Appellant and the said Daya Chand had violated the provisions of Sections 2(ia), (a), (b), (f), (h), (l), (m), Section 2(ix) (j), (k) and Section 24 of the Prevention of Food Adulteration Act, 1954 (for short, **"PFA Act"**) and Rule 32, Rule 42 (zzz)(i) and Rule 47 of the Prevention of Food Adulteration Rules, 1955 (for short, **"the Rules"**) and committed an offence punishable Under Section 16(1)(1A) read with Section 7 of the PFA Act and the Rules. Since Daya Chand died during the pendency of the case, the case abated as against him. The Appellant was tried and acquitted by learned Magistrate by order dated 27/2/2007.

4. Being aggrieved by the said order dated 27/2/2007, the Respondent-State preferred Criminal Appeal No. 13 of 2008 in the Sessions Court under Section 378(1) (a) of the Code. The Appellant raised a preliminary objection in regard to the maintainability of the said Appeal before the Sessions Court in view of Section 378(4) of the Code. He contended that an appeal arising from an order of acquittal in a complaint case shall lie to the High Court. The said objection was rejected by the Sessions Court by order dated 4/2/2009.

5. Aggrieved by the said order dated 4/2/2009, the Appellant preferred Criminal Misc. Case No. 427 of 2009 before the High Court. By order dated 9/7/2009, the High Court held that the Sessions Court has no jurisdiction to entertain an appeal filed in a complaint case and directed that the appeal be transferred to it. Accordingly, Criminal Appeal No. 13 of 2008 pending before the Sessions Court was transferred to the High Court and re-numbered as Criminal Appeal No. 642 of 2009.

6. The Respondent-State carried the said order dated 9/7/2009 to this Court by Special Leave Petition (Crl.) No. 9880 of 2009 (Criminal Appeal No. 1514 of 2010). By order dated 13/8/2010, this Court remanded the matter to the High Court and directed that the matter be decided afresh after taking into consideration Sections 378(1) and 378(4) of the Code and the relevant provisions of the PFA. On remand, the High Court passed the impugned judgment and order dated 7/1/2011.

7. The short point which arises for consideration in this appeal is **whether in a complaint case, an appeal from an order of acquittal of the Magistrate would lie to the Sessions Court under Section 378(1) (a) of the Code or to the High Court under Section 378(4) of the Code**.

8. At our request, Mr. Sidharth Luthra, learned Additional Solicitor General has assisted us as Amicus Curiae. We have heard Ms. Meenakshi Lekhi, learned Counsel appearing for the Petitioner and Mr. P.P. Malhotra, learned Additional Solicitor General appearing for the State. Written submissions have been filed by the counsel which we have carefully perused. Mr. Luthra took us through the relevant excerpts of Law Commission's reports. He took us

through the Code of Criminal Procedure (Amendment) Bill, 1994 (Bill No. XXXV of 1994). He also took us through un-amended and amended Section 378 of the Code. After analyzing the relevant provisions, Mr. Luthra submitted that no appeal lies against an order of acquittal in cases instituted upon a complaint to the Sessions Court. Ms. Lekhi also adopted similar line of reasoning.

9. Mr. Malhotra learned Additional Solicitor General adopted a different line of argument and therefore, it is necessary to note his submissions in detail. Counsel pointed out how the law relating to appeals against orders of acquittal has evolved over the years. Counsel submitted that under the Code of Criminal Procedure, 1861 no appeal against an order of acquittal could be filed. The Code of Criminal Procedure, 1872 permitted only the State Government to file an appeal against acquittal order. Section 417 of the Code of Criminal Procedure, 1898 permitted only the State to file an appeal against acquittal order. In 1955 it was amended so as to permit the complainant to file an appeal against acquittal order. Under the Code of Criminal Procedure, 1973, Section 417 was substituted by Section 378. Counsel pointed out that Under Section 378(4) a complainant could prefer appeal against order of acquittal, if special leave was granted by the High Court. However, in all cases the State could present appeal against order of acquittal. Counsel then referred to Section 378 of the Code as amended by Act No. 25 of 2005 and submitted that the only change in Sub-section (1) is adding Clauses (a) and (b) to it. Counsel described this change as minor and submitted that the State's right to file appeal against orders of acquittal remains intact and is not taken away. Counsel relied on the words 'State Government may, in any case' and submitted that these words preserve the State's right to file appeal against acquittal orders of all types. There is no limitation on this right whatsoever. This right is preserved according to the counsel because the State is the protector of people. Safety and security of the community is its concern. Even if a complainant does not file an appeal against an order of acquittal, the State Government can in public interest file it. Counsel also addressed us on the question of plurality of appeals. That issue is not before us. It is, therefore, not necessary to refer to that submission. In support of his submissions counsel placed reliance on **Khemraj v. State of Madhya Pradesh** MANU/SC/0141/1975: 1976 (1) SCC 385, **State (Delhi Administration) v. Dharampal** MANU/SC/0671/2001: 2001 (10) SCC 372, **Akalu Ahir and Ors. v. Ramdeo Ram** MANU/SC/0076/1973 : 1973 (2) SCC 583, **State v. Ram Babu and Ors.** MANU/UP/0251/1970: 1970 AWR 288, **Food Inspector v. Moidoo** 1988 (2) KLT 205, **Prasannachary v. Chikkapinachari and Anr.** MANU/KA/0051/1959: AIR 1959 (Kant) 106, **State of Maharashtra v. Limbaji Sayaji Mhaske, Sarpanch Gram Panchayat** 1976 (Mah.) LJ 475, **State of Punjab and Anr. v. Jagan Nath** MANU/PH/0389/1986: 1986 (90) PLR 466 and **State of Orissa v. Sapneswar Thappa** MANU/OR/0323/1986: 1987 Cri. L.J. 612.

10. To understand the controversy, it is necessary to have a look at Section 378 of the Code prior to its amendment by Act 25 of 2005 and Section 378 amended thereby.

11. Section 378 of the Code prior to its amendment by Act 25 of 2005 read as under:

Appeal in case of acquittal.

378. Appeal in case of acquittal. *(1) Save as otherwise provided in Sub-section (2) and subject to the provisions of Sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court 2*[or an order of acquittal passed by the Court of Session in revision.]*

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of Sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under Sub-section (1) or Subsection (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under Subsection (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-section (1) or under Sub-section (2).

Thus, under earlier Section 378(1) of the Code, the State Government could, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court or an order of acquittal passed by the Court of Session in revision.

Section 378(2) covered cases where order of acquittal was passed in any case in which the offence had been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 or by any other agency empowered to make investigation into an offence under any Central Act other than the Code. In such cases, the Central Government could also direct the Public Prosecutor to present an appeal to the High Court from an order of acquittal. Section
378(3) stated that appeals under sub-sections (1) and (2) of Section 378 of the Code could not be entertained except with the leave of the High Court. Sub-section (4) of Section 378 of the Code provided for orders of acquittal passed in any case instituted upon complaint. According to this provision, if on an application made to it by the complainant, the High Court grants special leave to appeal from the order of acquittal, the complainant could present such an appeal to the High Court. Sub-section (5) of Section 378 of the Code provided for a period of limitation. Sub-section (6) of Section 378 of the Code stated that if in any case, the application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-sections (1) or (2). Thus, if the High Court refused to grant special leave to appeal to the complainant, no appeal from that order of acquittal could be filed by the State or the agency contemplated in Section 378(2). It is clear from these provisions that earlier an appeal against an order of acquittal could only lie to the High Court. Sub-section (4) was aimed at giving finality to the orders of acquittal.

12. Before we proceed to analyze the amended Section 378 of the Code, it is necessary to quote the relevant clause in the 154th Report of the Law Commission of India, which led to the amendment of Section 378 by Act 25 of 2005. It reads thus:

*6.12. **Clause 37:** In order to guard against the arbitrary exercise of power and to reduce reckless acquittals, Section 378 is sought to be amended providing an appeal against an order of acquittal passed by a Magistrate in respect of cognizable and non-bailable offence filed on a police report to the Court of Session as directed by the District Magistrate. In respect of all other cases filed on a police report, an appeal shall lie to the High Court against an order of acquittal passed by any other court other than the High Court, as directed by the State Government. The power to recommend appeal in the first category is sought to be vested in the District Magistrate and the power in respect of second category would continue with the State Government.*

The Code of Criminal Procedure (Amendment) Bill, 1994 has the same note on Clause 37.

13. Though, the Law Commission's 154th report indicated that Section 378 was being amended to provide that an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence filed on a police report would lie to the court of Sessions, the words "police report" were not included in the amended Section 378. In this connection, it is necessary to refer to the relevant extract from the Law Commission's 221st report of April, 2009. After noting amendment made to Section 378 the Law Commission stated as under:

2.9 All appeals against orders of acquittal passed by Magistrates were being filed in High Court prior to amendment of Section 378 by Act 25 of 2005. Now, with effect from 23.06.2006, appeals against orders of acquittal passed by Magistrates in respect of cognizable and non-bailable offences in cases filed on police report are being filed in the Sessions Court, vide Clause (a) of Sub-section (1) of the said section. But, appeal against order of acquittal passed in any case instituted upon complaint continues to be filed in the High Court, if special leave is granted by it on an application made to it by the complainant, vide Sub-section (4) of the said section.

2.10 Section 378 needs change with a view to enable filing of appeals in complaint cases also in the Sessions Court, of course, subject to the grant of special leave by it.

These two extracts of the Law Commission's report make it clear that though the words 'police report' are not mentioned in Section 378(1) (a), the Law Commission noted that the effect of the amendment was that all appeals against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence in cases filed on police report are being filed in the Sessions Court. The Law Commission lamented that there is no provision enabling filing of appeal in complaint cases in the Sessions Court subject to the grant of special leave by it. Thus, the Law Commission acknowledged that there is no provision in the Code under which appeals in complaint cases could be filed in the Sessions Court. We agree with this opinion for reasons which we shall now state.

14. Having analysed un-amended Section 378 it is necessary to have a look at Section 378 of the Code, as amended by Act 25 of 2005. It reads as under: **378. Appeal in case of acquittal.** *[(1) Save as otherwise provided in Sub-section (2) and subject to the provisions of Sub-sections (3) and (5),-*

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and nonbailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court [not being an order under Clause (a)] [or an order of acquittal passed by the Court of Session in revision].

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code. [the Central Government may, subject to the provisions of Subsection (3), also direct the Public Prosecutor to present an appeal-

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under Clause (a)] or an order of acquittal passed by the Court of Session in revision.]

(3) [No appeal to the High Court] under Subsection (1) or Sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of' acquittal is passed in any case instituted upon Complaint and the High Court, on an application made to it by the complainant in this behalf, grants, special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under Subsection (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-section (1) or under Sub-section (2).

15. **At the outset, it must be noted that as per Section 378(3) appeals against orders of acquittal which have to be filed in the High Court Under Section 378(1)(b) and 378(2)(b) of the Code cannot be entertained except with the leave of the High Court. Section 378(1)(a) provides that, in any case, if an order of acquittal is passed by a Magistrate in respect of a cognizable and nonbailable offence the District Magistrate may direct the Public Prosecutor to present an appeal to the court of Sessions. Sub-section (1)(b) of Section 378 provides that, in any case, the State Government may direct the Public Prosecutor to file an appeal to the High Court from an**

original or appellate order of acquittal passed by any court other than a High Court not being an order under Clause (a) or an order of acquittal passed by the Court of Session in revision. Sub-section (2) of Section 378 refers to orders of acquittal passed in any case investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 or by any other agency empowered to make investigation into an offence under any Central Act other than the Code. This provision is similar to Sub-section (1) except that here the words 'State Government' are substituted by the words 'Central Government'.

16. **If we analyse Section 378(1)(a) & (b), it is clear that the State Government cannot direct the Public Prosecutor to file an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence because of the categorical bar created by Section 378(1)(b). Such appeals, that is appeals against orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence can only be filed in the Sessions Court at the instance of the Public Prosecutor as directed by the District Magistrate. Section 378(1)(b) uses the words "in any case" but leaves out orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence from the control of the State Government. Therefore, in all other cases where orders of acquittal are passed appeals can be filed by the Public Prosecutor as directed by the State Government to the High Court.**

17. Sub-section (4) of Section 378 makes provision for appeal against an order of acquittal passed in case instituted upon complaint. It states that in such case if the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such an appeal to the High Court. This Sub-section speaks of 'special leave' as against Sub-section (3) relating to other appeals which speaks of 'leave'. Thus, complainant's appeal against an order of acquittal is a category by itself. The complainant could be a private person or a public servant. This is evident from Subsection (5) which refers to application filed for 'special leave' by the complainant. It grants six months period of limitation to a complainant who is a public servant and sixty days in every other case for filing application. Sub-section (6) is important. It states that if in any case complainant's application for 'special leave' under Sub-section (4) is refused no appeal from order of acquittal shall lie under Subsection (1) or under Sub-section (2). Thus, if 'special leave' is not granted to the complainant to appeal against an order of acquittal the matter must end there. Neither the District Magistrate not the State Government can appeal against that order of acquittal. The idea appears to be to accord quietus to the case in such a situation.

18. Since the words 'police report' are dropped from Section 378(1) (a) despite the Law Commission's recommendation, it is not necessary to dwell on it. A police report is defined Under Section 2(r) of the Code to mean a report forwarded by a police officer to a Magistrate under Sub-section (2) of Section 173 of the Code. It is a culmination of investigation by the police into an offence after receiving information of a cognizable or a noncognizable offence. Section 2(d) defines a complaint to mean any allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but does not include a police report. Explanation to Section 2(d) states that a report made by a police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant. Sometimes investigation into cognizable offence conducted Under Section 154 of the Code may culminate into a complaint case (cases under the Drugs and Cosmetics Act, 1940). Under the PFA Act, cases are instituted on filing of a complaint before the Court of Metropolitan Magistrate as specified in Section 20 of the PFA Act and offences under the PFA Act are both cognizable and non-cognizable. Thus, **whether a case is a case instituted on a complaint depends on the legal provisions relating to the offence involved therein. But once it is a case instituted on a complaint and an order of acquittal is passed, whether the offence be bailable or nonbailable, cognizable or noncognizable, the complainant can file an application Under Section 378(4) for special leave to appeal against it in the High Court. Section 378(4) places no restriction on the complainant. So far as the State is concerned, as per Section 378(1)(b), it can in any case, that is even in a case instituted on a**

complaint, direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court. But there is, as stated by us hereinabove, an important inbuilt and categorical restriction on the State's power. It cannot direct the Public Prosecutor to present an appeal from an order of acquittal passed by a Magistrate in respect of a cognizable and noncognizable offence.

In such a case the District Magistrate may Under Section 378(1)(a) direct the Public Prosecutor to file an appeal to the Session Court. This appears to be the right approach and correct interpretation of Section 378 of the Code.

19. Mr. Malhotra is right in submitting that it is only when Section 417 of the Code of Criminal Procedure, 1898 was amended in 1955 that the complainant was given a right to seek special leave from the High Court to file an appeal to challenge an acquittal order. Section 417 was replaced by Section 378 in the Code. It contained similar provision. But, Act No. 25 of 2005 brought about a major amendment in the Code. It introduced Section 378(1) (a) which permitted the District Magistrate, in any case, to direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence. For the first time a provision was introduced where under an appeal against an order of acquittal could be filed in the Sessions Court. Such appeals were restricted to orders passed by a Magistrate in cognizable and non- bailable offences. Section 378(1)(b) specifically and in clear words placed a restriction on the State's right to file such appeals. It states that the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court not being an order under Clause (a) or an order of acquittal passed by the Sessions Court in revision. Thus, the State Government cannot present an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence. We have already noted Clause 37 of the 154th Report of the Law Commission of India and Clause 37 of the Code of Criminal Procedure (Amendment) Bill, 1994 which state that in order to guard against the arbitrary exercise of power and to reduce reckless acquittals Section 378 was sought to be amended to provide appeal against an order of acquittal passed by a Magistrate in respect of cognizable and non-bailable offence. Thus, this step is taken by the legislature to check arbitrary and reckless acquittals. It appears that being conscious of rise in unmerited acquittals, in case of certain acquittals, the legislature has enabled the District Magistrate to direct the Public Prosecutor to present an appeal to the Sessions Court, thereby avoiding the tedious and time consuming procedure of approaching the State with a proposal, getting it sanctioned and then filing an appeal.

20. It is true that the State has an overall control over the law and order and public order of the area under its jurisdiction. Till Section 378 was amended by Act 25 of 2005 the State could prefer appeals against all acquittal orders. But the major amendment made in Section 378 by Act 25 of 2005 cannot be ignored. It has a purpose. It does not throw the concern of security of the community to the winds. In fact, it makes filing of appeals against certain types of acquittal orders described in Section 378(1)(a) easier, less cumbersome and less time consuming. The judgments cited by Mr. Malhotra pertain to Section 417 of the Code of Criminal Procedure, 1898 and Section 378 prior to its amendment by Act 25 of 2005 and will, therefore, have no relevance to the present case.

21. In view of the above, we conclude that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court. In the instant case the complaint alleging offences punishable Under Section 16(1) (1A) read with Section 7 of the PFA Act and the Rules is filed by complainant Shri Jaiswal, Local Health Authority through Delhi Administration. The Appellant was acquitted by the Metropolitan Magistrate, Patiala House Courts, New Delhi. The complainant can challenge the order of acquittal by filing an application for special leave to appeal in the Delhi High Court and not in the Sessions Court. Therefore, the impugned order holding that this case is not governed by Section 378(4) of the Code is quashed and set aside. In the circumstances the appeal is allowed.

Ghurey Lal v State of Uttar Pradesh

(2008) 10 SCC 450

Bench : Dalveer Bhandari, R.V. Raveendran

The Judgment was delivered by: Dalveer Bhandari, J.

1. This appeal is directed against the judgment of the High Court of Allahabad dated 11th November, 2005 passed in Criminal Appeal No. 365 of 1981.

2. This is a murder case in which the trial court acquitted the accused. The High Court reversed the trial court's decision, finding the accused guilty. In doing so, the appellate court failed to give proper weight to the views of the trial court as to credibility of witnesses, thereby ignoring the standards by which the appellate courts consider appeals against acquittals.

3. We have endeavoured to set out the guidelines for the appellate courts in dealing with appeals against acquittal. An overriding theme emanates from the law on appeals against acquittals. The appellate court is given wide powers to review the evidence to come to its own conclusions. But this power must be exercised with great care and caution. In order to ensure that the innocents are not punished, the appellate court should attach due weight to the lower court's acquittal because the presumption of innocence is further strengthened by the acquittal. The appellate court should, therefore, reverse an acquittal only when it has "very substantial and compelling reasons."

4. In giving our reasons for reversing the appellate court's judgment and restoring that of the trial court, we provide a brief review of the facts, the reasoning of the trial and High Court as well as the standards by which appeals against acquittals are reviewed according to settled principles of criminal jurisprudence in our country.

8. It appears that at the heart of this matter lies a property dispute. The accused testified in favour of his great-grand daughter, Ram Devi. This testimony went against the deceased, creating enmity between the parties.

9. On 14.3.1979, the deceased, Shiv Charan P.W.1, Brij Raj Singh P.W.2, Yad Ram P.W.4, Nathi Lal (not examined) and Bishambhar (not examined) had taken the customary Gur (Jaggery) during the Holi festival. On their way home, they happened to pass by the home of the accused. The accused was standing just outside his home and was holding a shot gun. The accused began to verbally abuse the deceased. Thereafter, the accused fired one single shot from his gun, killing the deceased with a bullet and causing injuries to Brij Raj Singh P.W. 2 with pellets. Hearing the gun shot, some people quickly assembled at the scene. The accused fled to his room, which he locked from inside. The uncle of the deceased, Shiv Charan, lodged the FIR that very evening, the 14th March, 1979 at 6.15 p.m., at the Barhan Police Station in the District of Agra.

11. The accused provided his own version of the event. According to the statement of the accused u/s. 313 of the Code of Criminal Procedure, he went to the place of Kanchan Singh where Gur (Jaggery) was being distributed. One Bal Mukand told the accused to leave the Gur distribution ceremony, as the deceased, Brij Raj Singh P.W. 2, Yad Ram P.W.4, Nathi Lal and Bishambhar had collected pharsa, lathis and kattas declaring that they will deal with him (accused) when he comes there. On hearing this, the accused returned to his home and grabbed his gun. The deceased and others then arrived at his home, brandishing weapons.

12. The deceased carried a pharsa, Nathi Lal had a katta, Brij Raj Singh a knife and Yad Ram and Bishambhar possessed lathis. To threaten and check them, the accused aimed his gun at them. This was to no avail. The deceased and others struck at the accused, hitting his gun. Nathi Lal fired his katta, causing pellet injuries to Brij Raj Singh P.W.2. A scuffle ensued in which the deceased's group tried to snatch away his gun. In the scuffle, the gun was accidentally fired, killing the deceased. The accused sustained pharsa and lathi blows on the butt and barrel of the gun. Fearing for his life, the accused went to his room and locked the door from inside.

13. Brij Raj Singh P.W. 2 was sent to the Government Hospital, Barhan for medical examination. Dr. Govind Prasad P.W.3 found the following injuries on the person of Brij Raj Singh, P.W. 2. The Doctor opined that the injuries were caused by a firearm.

15. He advised that x-rays be taken and that the injuries be kept in observation. In his opinion, the injuries were caused by a gun shot and were of fresh duration. In his opinion, the injuries could have been caused around 4 p.m. The doctor sent the memo Ex. Ka-4 on the same day, informing the case of Medico legal nature to the Barhan Police Station.

16. The autopsy on the deceased was conducted by Dr. Ram Kumar Gupta, P.W.5, Medical Officer, SNM Hospital, Firozabad, District Agra. The Doctor opined that the cause of death was due to shock and hemorrhage as a result of ante-mortem injury.

18. The prosecution examined Shiv Charan P.W.1, Brij Raj Singh P.W.2 and Yad Ram P.W.4 as eye witnesses of the occurrence. Dr. Govind Prasad P.W.3, Medical Officer Incharge, who had medically examined Brij Raj Singh, proved the injury report Ext. Ka 3. Dr. Ram Kumar Gupta P.W. 5, who had conducted autopsy on the dead body of the deceased, was also examined. On internal examination, he found semi digested food material in the small intestine and there was faecal matter present in the large intestines. He prepared the postmortem report Ex. Ka-5. In his opinion, the death of the deceased had taken place around 4 p.m. on 14.3.79 on account of the said injuries and shock.

19. The accused was charged with killing the deceased u/s. 302 of the Indian Penal Code (For short, IPC) and with causing simple injuries to the injured u/s. 323 IPC. He was also charged with attempting to murder Brij Raj u/s. 307 IPC. The accused appellant denied the charges, pleaded not guilty and asked to be tried.

20. The crucial question which arose for consideration was **whether the injuries caused to Brij Raj Singh P.W.2 could have been caused by the same shot that killed the deceased.** If that was possible, the prosecution version became probable. But if the shot that killed the deceased and the shot that caused injuries to Brij Raj Singh were from different weapons, then the defence version was more probable. Shri B. Rai, Ballistic Expert, Forensic Science Laboratory, U.P. was called as court witness No.1. He was asked to explain the nature of the 12 bore cartridges and give an opinion, for which he wanted time to carry out experiments in the laboratory.

21. The gun was given to him and he performed a test in his laboratory in the light of the statements of the eye-witnesses, medical report and site-plan. He submitted his report, Ex. CKa.1, wherein he clearly opined that injuries Nos. 1 and 2 of the deceased were possible by the gun Ex.3 of the accused and injuries Nos.1 and 2 of the injured Brij Raj Singh were possible by another fire. By "fire", it is clear from the record that the Ballistic Expert was referring to a "firearm".

22. Ultimately, we must answer the following question: **Whether the prosecution story of a single shot causing injury to two persons, that is bullet injury to deceased and pellet injury to Brij Raj Singh, with the accused as the aggressor, stands sufficiently proved beyond reasonable doubt?**

17. In order to decide whether a single shot was fired or in fact two different shots were fired, we must carefully examine the versions of the prosecution and the defence and the report of the Ballistic Expert. According to the trial court, the medical evidence coupled with the Ballistic Expert report revealed the existence of two fires from two weapons and as such was inconsistent with the prosecution story. The trial court further provided that it is difficult to separate falsehood from the truth, as some material aspects of the occurrence appeared to have been deliberately withheld. *"One has to separate the chaff from the grain and it is difficult to lay hand upon what part of the prosecution evidence is true and what part is untrue".* According to the accused, the trial court had taken a reasonable and possible view of the entire evidence on record.

25. The trial court observed that injury no. 1 (wound of entry) on Brij Raj Singh P.W.2 was on the right side of his back 10 cm. away from the mid line, 9 cms below the lower border of scapula. Injury no. 2 (wound of exit) was on the right side of his back 8 cm. away and lateral from injury no.1. This means that the exit wound was by the side of the entry wound at a distance of 8 cm.

26. The dictionary meaning of 'lateral' is "by the side" and this means that the two injuries caused by pellets to Brij Raj Singh P.W.2 were horizontal and not vertical. The trial court opined that the single shot could not have caused vertical injury to one person and horizontal injury to another. It found it doubtful and not sufficiently proved that the same shot could have injured Brij Raj Singh and killed the deceased.

27. This conclusion is further fortified by the report of the Ballistic Expert Sri B. Rai court witness No.1. He has given a definite opinion after making actual experiments by firing shots. This was done from the distance at which the occurrence was said to have taken place. The eye-witnesses had testified to this distance. The Ballistic Expert opined that the injuries to Brij Raj Singh P.W.2 were from a different shot from the one that killed the deceased.

28. The relevant part of the evidence of the Ballistic Expert reads as under:

29. *"2. Question Whether bullet and Chharras both be used in 12 bore gun or not? Ans.12 bore gun have no bullet. It has small chharas, big chharas or one single ball shot with diameter about 0645."*

30. The Ballistic Expert after studying the postmortem report observed as under:

"Studying the Post Mortem report No. 51/79 of deceased Ghurey Lal and injury report of Brijraj Singh dated 14.3.79, statement of doctor and witnesses and site plan and keeping the result of above experiments in mind, I reached in conclusion that injury No. 1 and 2 possible to sustain to deceased Ghurey Lal by this gun from the distance of 10 feet and injury No. 1 and 2 of injured Brij Raj Singh seems to sustain by some other shot."

31. The Ballistic Expert categorically stated that in cartridges of standard 12 bore shot guns, bullets from other rifles cannot be used with small and big chharas (pellets). Therefore, the trial court concluded that both the injuries were not possible by a single firearm.

32. Leading experts of forensic science, particularly ballistic experts, do not indicate that from a single cartridge both bullets and pellets can be fired. Professor Apurba Nandy in his book "Principles of Forensic Medicine", first published in 1995 and reprinted in 2001, discussed cartridges. Professor Nandy mentioned that in some cases, instead of multiple pellets, a single shot or metallic ball, usually made of lead, is used. We note that the discussion regarding cartridges exclusively mentions pellets. No mention of bullets and pellets in cartridges is found in the numerous volumes of scholarly literature that we have consulted.

34. The trial court stated that in the FIR itself it is mentioned that the injuries to Brij Raj Singh were by pellets and that of the deceased by a bullet. The Ballistic Expert has stated that the cartridge containing pellets cannot contain a bullet.

Accordingly, the trial court reasoned that two weapons were used.

35. The Ballistic Expert is a disinterested, independent witness who has technical knowledge and experience. It follows that the trial judge was fully justified in placing reliance on his report.

36. The trial court also observed that removing the body of the deceased from the place of occurrence creates doubt that the prosecution was planning to substitute another story for the real facts. As such, the possibility that the deceased and his group were the aggressors is not ruled out. It is possible that pharsa and lathi blows had made the marks that were found on the gun. The gun may have snatched all of a sudden, causing it to fire upon the deceased and Brij Raj. Under the circumstances of the case, the use of another weapon, which had caused injuries to Brij Raj Singh P.W.2, is also not ruled out.

37. The trial court further observed that the substratum of the prosecution story about the injuries to Brij Raj Singh is not established beyond reasonable doubt and the story of shooting the deceased by the same shot fired by the accused is not separable from other doubtful evidence of eyewitnesses. The circumstances show that the possibility of aggression on the part of the complainant side is not ruled out, then the benefit of doubt for killing the deceased by the accused would also go to the accused.

38. The trial court also found force in the plea of right of private defence as set up by the accused.

39. The trial court mentioned that there is force in this argument where the circumstances of the case show that two fire arms were used in the occurrence.

The accused was all alone in his house at that time. The availability of a second weapon is possible only when the complainant side had brought it to the scene. This circumstance supports the defence case, that the complainants' side was the aggressor and they had come armed with weapons to the scene. It follows that the accused would apprehend grievous hurt and danger to his life. Accordingly, the right of self defence was open to him.

40. In the concluding paragraph of the judgment, the trial court observed that when neither the prosecution nor the defence version is complete, then it is obvious that both the parties are withholding some information from the court. The burden of proving the charge to the hilt lies upon the prosecution. It has failed to discharge its burden. Thus, the benefit has to go to the accused.

41. According to the trial court, the accused could not be convicted for the charges framed against him. He was entitled to get the benefit of doubt and, consequently, the accused had to be acquitted of the charges under sections 302, 307 and 323 IPC.

42. The State, aggrieved by the trial court's judgment, preferred an appeal before the High Court.

43. The High Court in appeal re-appreciated the entire evidence and came to the conclusion that the trial court's judgment was perverse and unsustainable. It therefore set aside the trial court judgment and convicted the accused u/s. 302 IPC for the murder of the deceased and u/s. 324 IPC for injuring Brij Raj Singh and sentenced him to life imprisonment and for six months R.I. respectively.

44. Against the impugned judgment of the High Court, the accused appellant has preferred appeal to this court. We have been called upon to decide whether the trial court judgment was perverse and the High Court was justified in setting aside the same or whether the impugned judgment is unsustainable and against the settled legal position?

45. We deem it appropriate to deal with the main reasons by which the trial court was compelled to pass the order of acquittal and the main reasons of the High Court in reversing the judgment of the trial court.

MAIN REASONS FOR ACQUITTAL BY THE TRIAL COURT:

The trial court acquitted the accused for the following reasons:

"1. The prosecution story of single shot injury to two persons one standing horizontally and the other vertically stands totally discredited by the medical and the evidence of Ballistic Expert.

2. According to the FIR, the deceased received a spherical ball (ball shot) bullet injury and Brij Raj Singh P.W.2 received pellet injuries.

The accused's gun had a cartridge that could only contain pellets. The Ballistic Expert has clearly stated that a cartridge containing pellets cannot contain a bullet. As such, it appears that two weapons were used.

3. Dr. Ram Kumar Gupta, P.W.5 who conducted the post-mortem of the deceased, clearly stated that the deceased received injuries from a bullet whereas Dr.

Govind Prasad Bakara who had examined Brijraj Singh P.W.2 clearly stated that both injuries were caused by a pellet.

Therefore, according to medical evidence coupled with the evidence of the Ballistic Expert, two firearms must have been used. This version is quite inconsistent with the prosecution story.

4. The injuries received by Brij Raj Singh P.W.2 were from the back side and the injury received by the deceased was from the front side and this shows that two weapons may have been used.

5. Removal of the body of the deceased from the place of occurrence also created doubt with regard to the veracity of the prosecution version.

6. The possibility that the deceased and the complainant's side were aggressors and had gone there and caused pharsa and lathi blows on the accused cannot be ruled out because of the marks on the gun Ex.3. That the said gun was fired in snatching all of a sudden, injuring the deceased also cannot be ruled out from the circumstances of the case.

7. The trial court did not discard the defence version of right of private defence as pleaded by the accused.

8. The trial court observed that it is difficult to separate falsehood from the truth, where some material aspects of the occurrence seem to have been deliberately withheld. It is a wellestablished principle of criminal jurisprudence that when two possible and plausible explanations co-exist, the explanation favourable to the accused should be adopted."

MAIN REASONS FOR REVERSAL OF ACQUITTAL ORDER:

46. The High Court gave the following reasons for setting aside the acquittal:

"1. A perusal of the post-mortem report goes to show that autopsy conducted on the dead body of the deceased revealed antemortem gunshot wound of entry 2.5 cm x through and through on right side neck 2 cm lateral to midline of neck front aspect having corresponding wound of exit 5 cm x 4 cm on right side back of neck 5 cm below right ear. Therefore, this injury was almost horizontal.

2. Medical examination of injured Brij Raj Singh revealed a round lacerated wound of entry 0.3 cm x 0.5 cm on right side back 10 cm away from midline and 9 cm below lower border of scapula having wound of exit 1.5 cm x 0.5 cm x 0.5 on right side back 0.8 cm away and lateral from injury no. 1. Thus, this injury was also almost horizontal.

3. The observation made by the trial judge that firearm injury caused to the deceased was vertical and to that of Brij Raj Singh horizontal is wholly fallacious.

4. A layman does not understand the distinction between a cartridge containing pellets and the bullet. In common parlance, particularly in villages when a person sustains injuries by gun shot, it is said that he has received 'goli' injury. Ghurey Lal fired at his uncle with his gun causing him Goli (bullet) injury and Brij Raj Singh also received pellet (chhara) injury which goes to show that injuries received by them were caused by two different

weapons. There is hardly any difference between bullet and pellet for a layman. From 12 bore gun cartridge is fired and 12 bore cartridge always contain pellets though size of pellets may be different.

5. A perusal of the post-mortem reports goes to show that autopsy conducted on the dead body of the deceased revealed antemortem gun shot wound of entry 2.5 cms. through and through on right side neck 2 cm lateral to midline of neck front aspect having corresponding wound of exit 5 cm x 4cm on right side back of neck 5 cm below right ear.

Therefore, this injury was almost horizontal.

6. The medical examination of injured Brij Raj Singh revealed a round lacerated wound of entry 0.3 cm x 0.5 cm on right side back 10 cm away from midline and 9 cm below lower border of scapula having wound of exit 1.5 cm x 0.5 cm x 0.5 cm on right side back 0.8 cm away and lateral from injury no.1.

Thus, this injury was also almost horizontal.

7. The learned trial judge had noted the evidence of B. Rai, Ballistic Expert, C.W.1 that both the injuries would have been caused by two shots. While B. Rai, Ballistic Expert, C.W.1 had given the said opinion, he had also stated in his cross examination by the prosecution that if the assailant fired from place 'C' and the person receiving pellet injury standing at place 'B' would have turned around, on dispersal of pellets he could have received the pellet injuries if deceased and injured both would have stood in the same line of firing."

OUR CONCLUSIONS:

47. We disagree with the High Court.

Admittedly, the deceased died of a bullet injury whereas Brij Raj Singh, P.W. 2 received pellet injuries. It is well settled that a cartridge cannot contain pellet and bullet shots together. Therefore, the injuries on deceased and injured P.W. 2 clearly establish that two shots were fired from two different fire arms.

48. The High Court also observed that the laymen, meaning thereby the villagers, hardly know the difference between a bullet and a pellet. This finding has no basis, particularly in view of the statement of all the witnesses on record. Wherever the witnesses wanted to use 'bullet' they have clearly used 'Goli' or 'bullet' and wherever they wanted to use 'pellet' they have clearly used the word 'Chharra' which means pellets, so to say that the witnesses did not understand the distinction between the two is without any basis or foundation.

52. We deem it appropriate to deal with some of the important cases which have been dealt with under the 1898 Code by the Privy Council and by this Court. We would like to crystallize the legal position in the hope that the appellate courts do not commit similar lapses upon dealing with future judgments of acquittal.

53. The earliest case that dealt with the controversy in issue was Sheo Swarup v. King Emperor AIR 1934 Privy Council 227. In this case, the ambit and scope of the powers of the appellate court in dealing with an appeal against acquittal has been aptly elucidated by the Privy Council. Lord Russell writing the judgment has observed as under:

"..the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.."

54. The law succinctly crystallized in this case has been consistently followed by this Court. On proper analysis of the ratio and findings of this case, it is revealed that the findings of the trial court are based on the fundamental principles of the criminal jurisprudence. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the trial court. The appellate court undoubtedly has wide powers of reappreciating and reevaluating the entire evidence but it would be justified in interfering with the judgment of acquittal only when the judgment of the trial court is palpably wrong, totally illfounded or wholly misconceived, based on erroneous analysis of evidence and non-existent material, demonstrably unsustainable or perverse.

55. This Court again in the case of Surajpal Singh & Others v. State, AIR 1952 SC 52, has spelt out the powers of the High Court. The Court has also cautioned the Appellate Courts to follow well established norms while dealing with appeals from acquittal by the trial court. The Court observed as under:

"It is well established that in an appeal under S. 417 Criminal P.C., the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well-settled that the presumption of

innocence of the accused was further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

56. This Court reiterated the principles and observed that presumption of innocence of accused is reinforced by an order of the acquittal. The appellate court could have interfered only for very substantial and compelling reasons.

57. In Tulsiram Kanu v. The State, AIR 1954 SC 1, this Court explicated that the appellate court would be justified in reversing the acquittal only when very substantial question and compelling reasons are present. In this case, the Court used a different phrase to describe the approach of an appellate court against an order of acquittal. There, the Sessions Court expressed that there was clearly reasonable doubt in respect of the guilt of the accused on the evidence put before it. Kania, C.J., observed that it required good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate court came to a different conclusion.

58. In the same year, this Court had an occasion to deal with Madan Mohan Singh v. State of Uttar Pradesh, AIR 1954 SC 637, wherein it said that the High Court had not kept the rules and principles of administration of criminal justice clearly before it and that therefore the judgment was vitiated by nonadvertence to and mis-appreciation of various material facts transpiring in evidence. The High Court failed to give due weight and consideration to the findings upon which the trial court based its decision.

59. The same principle has been followed in Atley v. State of U.P. AIR 1955 SC 807, wherein the Court said:

"It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal."

63. In Noor Khan v. State of Rajasthan, AIR 1964 SC 286, this Court relied on the principles of law enunciated by the Privy Council in Sheo Swarup1934 Indlaw PC 30 (supra) and observed thus:

"Sections 417, 418 and 423 give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

64. In Khedu Mohton & Others v. State of Bihar, (1970) 2 SCC 450, this Court gave the appellate court broad guidelines as to when it could properly disturb an acquittal. The Court observed as under:

"3. It is true that the powers of the High Court in considering the evidence on record in appeals under Section 417, Cr. P.C. *are as extensive as its powers in appeals against convictions but that court at the same time should bear in mind the presumption ofinnocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the appellate judge had found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusions. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal."*

65. In Shivaji Sahabrao Bobade & Another v. State of Maharashtra, (1973) 2 SCC 793, the Court observed thus:

"An appellant aggrieved by the overturning of his acquittal deserves the final court's deeper concern on fundamental principles of criminal justice..... ..... But we hasten to add even here that, although the learned judges of the High

Court have not expressly stated so, they have been at pains to dwell at length on all the points relied on by the trial court as favourable to the prisoners for the good reason that they wanted to be satisfied in their conscience whether there was credible testimony warranting, on a fair consideration, a reversal of the acquittal registered by the court below. In law there are no fetters on the plenary power of the Appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration, In our view the High Court's judgment survives this exacting standard."

66. In Lekha Yadav v. State of Bihar (1973) 2 SCC 424, the Court following the case of Sheo Swarup1934 Indlaw PC 30 (supra) again reiterated the legal position as under:

"The different phraseology used in the judgments of this Court such as- (a) substantial and compelling reasons: (b) good and sufficiently cogent reasons; (c) strong reasons.

are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified."

67. In Khem Karan & Others v. State of U.P. & Another AIR 1974 SC 1567 1974 Indlaw SC 396, this Court observed:

"Neither mere possibilities nor remote possibilities nor mere doubts which are not reasonable can, without danger to the administration of justice, be the foundation of the acquittal of an accused person, if there is otherwise fairly credible testimony."

68. In Bishan Singh & Others v. The State of Punjab (1974) 3 SCC 288, Justice Khanna speaking for the Court provided the legal position:

"22. It is well settled that the High Court in appeal u/s. 417 of the CrPC *has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless is be found expressly stated be in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; & (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses."* 69. In Umedbhai Jadavbhai v. The State of Gujarat (1978) 1 SCC 228, the Court observed thus:

"In an appeal against acquittal, the High Court would not ordinarily interfere with the Trial Court's conclusion unless there are compelling reasons to do so inter alia on account of manifest errors of law or of fact resulting in miscarriage of justice."

70. In B.N. Mutto & Another v. Dr. T.K. Nandi (1979) 1 SCC 361, the Court observed thus:

"It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons. [Salmond J. in his charge to the jury in R.V. Fantle reported in 1959 Criminal Law Review
584.]"

71. In Tota Singh & Another v. State of Punjab (1987) 2 SCC 529, the Court reiterated the same principle in the following words: *"This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."*

72. In Ram Kumar v. State of Haryana 1995 Supp. (1) SCC 248, this Court had another occasion to deal with a case where the court dealt with the powers of the High Court in appeal from acquittal. The Court observed as under:

".. the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions u/ss. 378 and 379 CrPC *are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of of seeing the witness.*

No doubt it is settled law that if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal. We shall, therefore, examine the evidence and the material on record to see whether the conclusions recorded by the Trial Court in acquitting the appellant are reasonable and plausible or the same are vitiated by some manifest illegality or the conclusion recorded by the Trial Court are such which could not have been possibly arrived at by any Court acting reasonably and judiciously which may in other words be characterized as perverse."

73. This Court time and again has provided direction as to when the High Courts should interfere with an acquittal. In Madan Lal v. State of J & K, (1997) 7 SCC 677 1997 Indlaw SC 1460, the Court observed as under:

"8. ..... that there must be "sufficient and compelling reasons" or "good and sufficiently cogent reasons" for the appellate court to alter an order of acquittal to one of conviction....."

74. In Sambasivan & Others v. State of Kerala (1998) 5 SCC 412, while relying on the case of Ramesh Babulal Doshi (Supra), the Court observed thus:

"The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."

75. In Bhagwan Singh & Others v. State of M.P. (2002) 4 SCC 85, the Court repeated one of the fundamental principles of criminal jurisprudence that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court observed as under:- *"7. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided."*

76. In Harijana Thirupala & Others v. Public Prosecutor, High Court of A.P., Hyderabad (2002) 6 SCC 470 2002 Indlaw SC 1635, this Court again had an occasion to deal with the settled principles of law restated by several decisions of this Court. Despite a number of judgments, High Courts continue to fail to keep them in mind before reaching a conclusion. The Court observed thus:

"10. The principles to be kept in mind in our system of administration of criminal justice are stated and restated in several decisions of this Court. Yet, sometimes High Courts fail to keep them in mind before reaching a conclusion as to the guilt or otherwise of the accused in a given case. The case on hand is one such case. Hence it is felt necessary to remind about the well-settled principles again. It is desirable and useful to remind and keep in mind these principles in deciding a case.

11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged.

Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses.

It must be added that ultimately and finally the decision in every case depends upon the facts of each case.

12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with the order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity."

77. In C. Antony v. K.G. Raghavan Nair,
(2003) 1 SCC 1 had to reiterate the legal position in cases where there has been acquittal by the trial courts. This Court observed thus:

"6. This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court."

78. In State of Karnataka v. K. Gopalkrishna, (2005) 9 SCC 291, while dealing with an appeal against acquittal, the Court observed:

"In such an appeal the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of acquittal."

79. In The State of Goa v. Sanjay Thakran, (2007) 3 SCC 755, this Court relied on the judgment in State of Rajasthan v. Raja Ram (2003) 8 SCC 180 and observed as under:

"15. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. ... The principle to be followed by appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference." The Court further held as follows:

"16. it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below."

80. In Chandrappa & Others v. State of Karnataka (2007) 4 SCC 415, this Court held:

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 *puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

The following principles emerge from the cases above:

"1. The appellate court may review the evidence in appeals against acquittal u/ss. 378 and 386 of the Criminal Procedure Code, 1973. *Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. "

81. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

82. **In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:**

"1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice"; (iv) The entire approach of the trial court in dealing with the evidence was patently illegal; (v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached one that leads to acquittal, the other to conviction the High Courts/appellate courts must rule in favour of the accused."

83. Had the well settled principles been followed by the High Court, the accused would have been set free long ago.

84. Though the appellate court's power is wide and extensive, it must be used with great care and caution.

85. We have considered the entire evidence and documents on record and the reasoning given by the trial court for acquitting the accused and also the reasoning of the High Court for reversal of the judgment of acquittal. We have also dealt with a number of cases decided by the Privy Council and this Court since 1934. In our considered opinion, the trial court carefully scrutinized the entire evidence and documents on record and arrived at the correct conclusion. We are clearly of the opinion that the reasoning given by the High Court for overturning the judgment of the trial court is wholly unsustainable and contrary to the settled principles of law crystallized by a series of judgment.

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86. On marshalling the entire evidence and the documents on record, the view taken by the trial court is certainly a possible and plausible view. The settled legal position as explained above is that if the trial court's view is possible and plausible, the High Court should not substitute the same by its own possible views. The difference in treatment of the case by two courts below is particularly noticeable in the manner in which they have dealt with the prosecution evidence. While the trial court took great pain in discussing all important material aspects and to record its opinion on every material and relevant point, the learned Judges of the High Court have reversed the judgment of the trial court without placing the very substantial reasons given by it in support of its conclusion. The trial court after marshalling the evidence on record came to the conclusion that there were serious infirmities in the prosecution's story.

87. Following the settled principles of law, it gave the benefit of doubt to the accused. In the impugned judgment, the High Court totally ignored the settled legal position and set aside the well-reasoned judgment of the trial court.

88. The trial court categorically came to the finding that when the substratum of the evidence of the prosecution witnesses was false, then the prosecution case has to be discarded. When the trial court finds so many serious infirmities in the prosecution version, then the trial court was virtually left with no choice but to give benefit of doubt to the accused according to the settled principles of criminal jurisprudence.

89. On careful analysis of the entire evidence on record, we are of the view that the reasons given by the High Court for reversing the judgment of acquittal is unsustainable and contrary to settled principles of law. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.

90. On consideration of the totality of the circumstances, the appeal filed by the appellant is allowed and the impugned judgment passed by the High Court is set aside. The appellant would be set at liberty forthwith unless required in any other case.

Appeal allowed

IN THE SUPREME COURT OF INDIA

Bindeshwari Prasad Singh @ B.P. Singh and Ors. Vs. State of Bihar (Now Jharkhand) and Anr.

(2002) 6 SCC 650

Judges/Coram:

M.B. Shah and B.P. Singh, JJ.

CaseNote:

Code of Criminal Procedure, 1973 - Sections 397 and 401--Revision against acquittal--Jurisdiction of

High Court--High Court cannot convert finding of acquittal into one of conviction--Murder case-Acquittal by trial court affirmed by High Court--Revision by informant--Whether High Court justified in reappreciating evidence, setting aside acquittal and directing retrial?-- Held, "no" when no legal infirmity found.

Sub-section (3) of Section 401, Cr. P.C., in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid subsection, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified.

In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

In exercise of revisional jurisdiction against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not constitute itself into an appellate court which has a much wider jurisdiction to go into questions of facts and law, and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a retrial is ordered, the dice is heavily loaded against the accused, and that itself must caution the Court exercising revisional jurisdiction. Therefore, there is no justification for the impugned order of the High Court ordering retrial of the appellants.

JUDGMENT

B.P. Singh, J.

1. Special leave granted.

2. The appellants herein were tried by the learned Sessions Judge, Dhanbad in Sessions Trial No. 193 of 1992 charged of the offence under Sections 302 and 302/114 of the Indian Penal Code. The learned Sessions Judge by judgment and order dated 21st January, 1994 acquitted the appellants of the charges leveled against them, finding that the prosecution had not proved its case beyond reasonable doubt.

3. The appeal preferred by the State against the acquittal of the appellants was dismissed by the High Court by its order dated 22nd November, 1994. No doubt the appeal was dismissed on the ground of limitation.

4. A revision was preferred by the informant to the High Court under Section 401 of the Code of Criminal Procedure which has been allowed by the impugned judgment and order dated 6th June, 2001 in Criminal Revision No. 48 of 1994. The judgment of acquittal was set aside and the case was remitted to the Sessions Judge for re-trial in accordance with law.

5. From the evidence on record it appears that an occurrence took place on 20th July, 1989 at about 4.00 p.m. The informant and appellant No. 1 entered into an altercation in connection with removal of creepers which had climbed up to the balcony of the informant. The informant as well as appellant 2 to 5 herein reside in the same

building. The altercation took an ugly turn and abuses were exchanged between appellant No. 1 and the informant. In the meantime son of the informant, namely Kumud came down and asked the appellants as to why they had not removed the creepers. The case of the prosecution is that appellant No. 1 and other appellants shouted and ordered assault on Kumud. In the assault that followed, deceased Kumud was hit on the head with an iron rod, as a result of which he sustained a serious injury. He was taken to the Bokaro General Hospital, where he was declared dead.

6. The matter was reported to the police. Thereafter the case was investigated and the appellants were put up for trial before the Sessions Judge, Dhanbad.

7. The prosecution relied upon the testimony of three eye witnesses, namely PWs. 1, 3 and 4, who were the mother, sister and father respectively of the deceased. The First Information Report was lodged by PW.4, the father of the deceased. The prosecution also relied upon the medical evidence on record, which according to the prosecution, corroborated the evidence of the witnesses. The learned Sessions Judge after a consideration of the evidence on record, acquitted the appellants of the charges leveled against them.

8. The State's appeal having been dismissed, a criminal revision was filed by the informant, PW.4 under Section 401 of the Code of Criminal Procedure before the High Court.

9. In the revision before the High Court it was sought to be urged on behalf of the informant that there was no reason to discard the testimony of PWs. 1, 3 & 4. The medical evidence on record corroborated their testimony. Therefore, on the basis of the evidence on record, it should have been held that the prosecution had proved its case beyond reasonable doubt.

10. On the other hand it was high-lighted by the appellants that the trial court had recorded its reasons for their acquittal. In the First Information Report a clear allegation was made against appellant No. 1 of having assaulted Kumud (deceased) on his head with an iron rod. However, other witnesses in the course of their deposition attributed the assault on Kumud to appellant No. 2, Anuj. The informant also, in his deposition before the Court, changed his version and in line with other witnesses deposed that it was Anuj, appellant No. 2 who gave the blow with an iron rod on the head of the deceased resulting in his death. The medical evidence on record discloses that there were two external injuries only, the first being a lacerated wound over the middle part of the left parietal area and the other being an abrasion on the back of the right elbow.

11. A mere perusal of the judgment of the High Court would disclose that the High Court re-appreciated the evidence on record and came to the conclusion that the learned Sessions Judge was not justified in recording the order of acquittal. The evidence of eye witnesses was consistent and so far as the informant is concerned, no doubt in the First Information Report he had attributed the fatal injury to appellant No. 1 but he later changed his version and deposed that the injury was caused by appellant No. 2. The High Court was impressed by the argument that the First Information Report not being a substantive piece of evidence, at best the evidence of the informant was not corroborated by the First Information Report. The High Court further found that the presence of eye witnesses was natural and the mere fact that they were related was no ground to discard their testimony. Rejecting the argument urged on behalf of the appellants that there was no mention in the First Information Report about the presence of the wife and the daughter of the informant as eye witnesses who witnessed the occurrence from the balcony, the learned Judge observed that it was not expected that every detail would be mentioned in the First Information Report. On such reasoning, the High Court set aside the order of acquittal and ordered re-trial of the appellants.

12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in reappreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure.

Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this

Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See MANU/SC/0023/1951 : 1951CriLJ510 : 1951CriLJ510 :D. Stephens v. Nosibolla; MANU/SC/0133/1962 : [1963]3SCR412 : K.C. Reddy v. State of Andhra Pradesh : MANU/SC/0076/1973 : 1973CriLJ1404 : Akalu Ahir and Ors. v. Ramdeo Ram MANU/SC/0179/1975 : AIR1975SC1854 : Pakalapati Narayana Gajapathi Raju and Ors.

v. Bonapalli Peda Appadu and Anr. and MANU/SC/0398/1967 : 1968CriLJ665 : 1968CriLJ665 : Mahendra Pratap Singh v. Sarju Singh).

13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not re-appreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant.

It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial Court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself.

At best the High Court thought that the prosecution witnesses were reliable while the trial court took the opposite view. This Court has repeatedly observed that in exercise of revisional jurisdictional against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not constitute itself into an appellate court which has a much wider jurisdiction to go into questions of facts and law, and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a re-trial is ordered, the dice is heavily loaded against the accused, and that itself must caution the Court exercising revisional jurisdiction. We, therefore, find no jurisdiction for the impugned order of the High Court ordering re-trial of the appellants.

15. The High Court has noticed the fact that the State had preferred an appeal against the acquittal of the appellants. That appeal was dismissed by the High Court on the ground of limitation. In principle that makes no difference, because the dismissal of the appeal even on the ground of limitation is a dismissal for all purposes. As observed earlier, the jurisdiction of the High Court in dealing with an appeal against acquittal preferred under Section 374 of the Code of Criminal Procedure is much wider than the jurisdiction of revisional court exercising jurisdiction under Section 401 of the Code of Criminal Procedure against an order of acquittal at the instance of a private party. All grounds that may be urged in support of the revision petition may be urged in the appeal, but not vice versa. The dismissal of an appeal preferred by the State against the order of acquittal puts a seal of finality on the judgment of the trial court. In such a case it may not be proper exercise of discretion to exercise revisional jurisdiction under Section 401 of the Code of Criminal Procedure against the order of acquittal at the instance of a private party. Exercise of revisional jurisdiction in such a case may give rise to an incongruous situation where an accused tried and acquitted of an offence, and the order of acquittal upheld in appeal by its dismissal, may have to face a second trial for the same offence of which he was acquitted.

16. For these reasons we allow this appeal and set aside the impugned judgment and order of the High Court.

IN THE SUPREME COURT OF INDIA

Rama and Ors. Vs. State of Rajasthan

AIR 2002 SC 1814

Judges/Coram:

M.B. Shah and B.N. Agrawal, JJ.

JUDGMENT

B.N. Agrawal, J.

1. Leave granted.

2. Judgment impugned in this appeal has been rendered by Jodhpur Bench of the Rajasthan High Court whereby criminal appeal preferred by the appellants has been dismissed confirming the convictions and sentences awarded against the appellants by the trial court under Sections 326 and 325 read with Sections 34 of the Indian Penal Code.

3. The said criminal appeal was filed in the year 1987 and duly admitted. The same was placed for hearing in the year 2001 and after hearing the parties, the High Court passed an order in four pages. The impugned judgment, runs into seven paragraphs and after referring to the prosecution case and defence version in paras 1 to 5, the Court has disposed of the appeal in two paragraphs which runs thus:-

"6. After re-appreciation of the evidence and re-scrutiny of the record, I find that there is no error apparent in the finding recorded by the learned Judge, therefore, there is no reason to interfere in the order of conviction passed by the learned Judge.

7. In the result, therefore, the present appeal is dismissed."

4. The impugned judgment has been challenged on the sole ground that the High Court has not disposed of the appeal in the manner postulated under law inasmuch as it does not appear from the impugned judgment as to how many witnesses were examined on behalf of the prosecution and on what point. The High Court has not even referred to any evidence much less considered the same. In our view, it is a novel method of disposal of criminal appeal against conviction by simply saying that after re-appreciation of the evidence and re-scrutiny of the records, the Court did not find any error apparent in the finding of the trial court even without reappraising the evidence. In our view, the procedure adopted by the High Court is unknown to law.

It is well settled that in a criminal appeal, a duty is enjoined upon the appellant court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused which cannot be permitted under law.

Thus, we are of the view that on this ground alone, the impugned order is fit to be set aside and the matter remitted to the High Court.

5. Accordingly, the appeal is allowed, impugned order passed by the High Court is set aside and the matter is remitted to that Court for disposal of the appeal in accordance with law after giving opportunity of hearing to the parties.

Amar Nath and Others v. State of Haryana and Others
(1977) 4 SCC 137

Case No: Cr.A. No. 124 of 1977

Bench: S. Murtaza Fazal Ali, N.L. Untwalia

Summary : Criminal - Practice & Procedure - Code of Criminal Procedure, 1973, s.397 (2) - Charge sheet - Natural justice - Prejudice - Compulsion - Appellants and others were mentioned in F.I.R as participated in occurrence resulted in death of deceased and Charge-sheet was submitted - Police opined no weapon was recovered nor evidence about participation of appellants and submitted its report u/s. 173 of CrPC - Trial Court set appellants at liberty - Complainant filed revision was dismissed - Informant filed complaint against all accused including appellants was dismissed by Trial Court - Complainant filed revision was accepted and remanded to Trial Court - Trial Court issued summons to, appellants - Appellants filed W.P. u/ss. 482 ,397 of CrPC was dismissed and declared that order of, Trial Court summoning appellants was interlocutory order and revision was barred - Hence instant appeal - Whether appellants was competent to revision u/s. 397(1) of CrPC - Held, sometimes interlocutory orders caused harassment to accused by unnecessarily protracting trials - Accused person should get fair trial in accordance with principles of natural justice and effort should be made to avoid delay in investigation - Any order which affects right of accused, could not be said to be interlocutory order, as it would affect s. 397 of CrPC - Right of appellants was denied and were prejudiced by interlocutory order - Compelling appellants to face trial without proper application could not be interlocutory matter - Hence, revision against order was competent u/s. 397(1) of CrPC - Order accordingly.

The Judgment was delivered by: Syed Murtaza Fazalali, J.

1. This appeal by special leave involves an important question as to the interpretation, scope, ambit and connotation of the word "interlocutory order" as appearing in sub S. (2) of S. 397, of the Code of Criminal Procedure 1973. For the purpose of brevity, we shall refer to the Code of Criminal Procedure-, 1898 as "the 1898 Code,", to the Code of Criminal Procedure, 1898 as amended in 1955 as "the 1955 Amendment" and to the Code of Criminal Procedure, 1973 as "the 1973 Code".

The appeal arises in the following circumstances.

2. An incident took place in village Amin on April 23, 1976 in the course of which three persons died and F.I.R. No. 139 dated April 23, 1976 was filed at police station Butana, District Karnal at about 5-30 P.M. The F.I.R. mentioned a number of accused persons in including the appellants as having participated in the occurrence which resulted in the death of the deceased. The police, after holding investigations, submitted a charge-sheet against the other accused persons except the appellants against whom the police opined that no case at all was made out as no, weapon was recovered nor was there any clear evidence about the participation of the appellants. The police thus submitted its final report under s. 173 of the 1973 Code insofar as the appellants were concerned. The report was placed before Mr. B. K. Gupta the Judicial Magistrate, 1st.Class, Karnal, who after perusing the same set the appellants at liberty after having accepted the report. It appears that the complainant filed a revision petition before the Additional Sessions Judge, Karnal against the order of the Judicial Magistrate, 1st Class, Karnal releasing the appellants, but the same

was dismissed on July 3, 1976. The informant filed a regular complaint before the Judicial Magistrate, 1st Class, on July 1, 1976 against all the 11 accused including the appellants.

3. The, Learned Magistrate, after having examined the complainant and going through the record, dismissed the, complaint as he was satisfied that no case was made out against the appellants. Thereafter the complainant took up the matter in revision before the Sessions Judge, Karnal, who this time accepted the revision petition and remanded the case to the Judicial Magistrate for further enquiry. On November 15, 1976, the learned Judicial Magistrate, on receiving the order of the Sessions Judge, issued summons to the, appellants straightaway. The appellants then moved the High Court under s. 482 and s. 397 of the 1973 Code for quashing the order of the Judicial Magistrate mainly on the ground that the Magistrate had issued the summons in a mechanical manner without applying his judicial mind to the facts of the case. The High Court dismissed the petition in limine and refused to entertain it on the ground that as the order of, the Judicial Magistrate dated November 15, 1976 summoning the appellants was an interlocutory order, a revision to the High Court was barred by virtue of sub s. (2) of s. 397 of the 1973 Code. The learned Judge further held that as the revision was barred, the Court could not take up the case under s. 482 in order. to quash the very order of the Judicial Magistrate under s. 397(1) of the 1973 Code. Otherwise the very object of s. 397(2) would be defeated.

4. While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-s. (2) of S. 397 of the 1973 Code the inherent powers contained in s. 482 would not be available to defeat the bar contained in s. 397(2). S. 482 of the 1973 Code contains the inherent powers of the Court and does not confer any 'new powers but preserves the powers which the High Court already possessed. A harmonious construction of ss. 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under s. 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of s. 482 would not apply. It is well settled that the inherent powers of the, Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers. So far as the second plank of the view of the learned Judge that the order of the Judicial Magistrate in the instant case was' an interlocutory order is concerned, it is a matter which merits serious consideration.

5. A history of the criminal legislation in India would manifestly reveal that so far as the Code of Criminal Procedure is concerned both in the 1898 Code and 1955 Amendment the widest possible powers of, revision had been given to the High Court under ss. 435 and 439 of those, Codes. The High Court could examine the propriety of any order-whether final or interlocutory-passed by any Subordinate Court in a criminal matter. No limitation and restriction on the powers of the High Court were placed. But this Court as also the various High Courts in India, by a long course of decisions, confined the exercise of revisional powers only to cases where the impugned order suffered from any error of law or any legal infirmity causing injustice or prejudice to the accused or was manifestly foolish or perverse. These restrictions were placed by the case law, merely as a rule of prudence rather than a rule of law and in suitable cases the High Courts had the undoubted power to interfere with the impugned order even on facts. Ss. 435 and 439 being identical in the 1898 Code and 1955 Amendment insofar as they are relevant run, thus:

"435(1) The High Court or any Sessions Judge or District Magistrate or any Sub-divisional Magistrate empowered by the State Government in this behalf, may call ,for and examine the

record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court....."

"439.(1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by section 423, 426, 427 and 428 or on a Court by section 338, and may enhance the, sentence; and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by s. 429.

(2) No order under this section shall be made to the prejudice of the, accused unless he has had an opportunity of being heard either personally or by pleader in his own defence."

6. In fact the only rider that was put under S. 439 was that where the Court enhanced the sentence the accused had to be given an opportunity of. being heard.

7. The concept of an interlocutory order qua the revisional jurisdiction of the High Court, therefore, was completely foreign to the earlier Code. Subsequently it appears that there had been large number of arrears and the High Courts were flooded with revisions of all kinds against interim or interlocutory orders which led to enormous delay in the disposal of cases and exploitation of the poor accused by the affluent prosecutors. Sometimes interlocutory orders caused harassment to the accused by unnecessarily protracting the trials. It was in the background of these facts that the Law Commission dwelt on this aspect of the matter and in the 14th and 41st Reports submitted by the Commission which formed the basis of the 1973 Code the said Commission suggested revolutionary changes to be made in the powers of the High Courts. The recommendations of the Commission were examined carefully by the Government, keeping in view, the following basic' considerations.

(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and

(iii) 'the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.

8. This is clearly mentioned, in the Statement of Objects and Reasons accompanying the 1973 Code. Cl. (d) of Paragraph 5 of the Statement of Objects and Reasons-runs thus :

"the, powers of revision against interlocutory orders are being takken away, as it has been found to be one of the main contributing factors in the delay of disposal of criminal cases Similarly, replying to the debate in the Lok Sabha on sub-cl. (2) of Clause 397, Shri Ram Niwas Mirdha, the Minister concerned, observed as follows :

"It was stated before the Select Committee that a large number of appeals against interlocutory orders are filed with the result that the appeals got delayed considerably. Some of the more notorious cases concern big business persons. So, this new provision was also welcomed by most

of the witnesses as well as the Select Committee..... This was a well-thought out measure so we do not want to delete it".

Thus it would appear that s. 397(2) was incorporated in the 1973 Code with the avowed purpose of cutting out delays and ensuring that the accused persons got a fair trial without much delay and the procedure was not made complicated. Thus the paramount object in inserting this new provision of sub- s. (2) of s. 397 was to safeguard the interest of the accused.

9. Let us now proceed to interpret the provisions of s. 397 against the historical background of these facts. Sub-s. (2) of s. 397 of the 1973 Code may be extracted thus :

"The powers of revision conferred by Sub- s. (1) shall not be exercised in relation to any interlocutory order passed ;in any appeal, inquiry, trial or other proceeding."

10. The main question which falls for determination in this appeal is as to, the what is the connotation of the term "interlocutory order" as appearing in sub-s. (2) of s. 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious diffident. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide 'the rights and liabilities of the parties concerning a particular aspect. It seems to, us that the term "interlocutory order" in s. 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights, or the liabilities of the parties. Any order which substantially affects the, right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in s. 397 of the, 1973 Code.

Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under s. 397 (2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be. outside the purview of the revisional jurisdiction of the High Court. In Central Bank of India v. Gokal Chand, A.I.R. 1967 S.C. 799 1966 Indlaw SC 58 this Court while describing the incidents of an interlocutory order, observed as follows:

"In the context of s. 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are. merely procedural , 800. and do not affect the rights or liabilities of the parties. In a pending proceeding the Controller, may pass many interlocutory orders under ss. 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only 'and do not affect any right or liability of the

parties."

11. The aforesaid decision clearly illustrates the nature and incidents of 'an interlocutory order and the incidents given by this Court constitute sufficient guidelines to interpret the connotation of the. word "interlocutory order" as appearing in sub-s. (2) of s. 397 of the 1973 Code. Similarly in a later case in Mohan Lal Magan Lal Thacker v. State of Gujarat, [1968] 2 S.C.R. 685 1967 Indlaw SC 399 this Court pointed out that the finality of an order could not be judged by co-relating that order with the controversy in the complaint. The fact that the controversy still remained alive was irrelevant. In that case this Court held that even though it was an interlocutory order, the order was a final order. Similary in Baldevdas v. Filmistan Distributors (India) Pvt. Ltd., A.I.R. [1970] S.C. 406 1969 Indlaw SC 184 while interpreting the import of the words "case decided" appearing in S. 115 of the. Code of Civil Procedure, this Court observed as follows:

"A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy;"

12. Apart from this it would appear that under the various provisions of the Letters Patent of the High Courts in India, an appeal lies to a Division Bench from an order passed by a Single Judge and some High Courts have held that even though the order may appear to be an interlocutory one where it does decide one of the aspect of the rights of the parties it is, appealable. For instance, an order of a Single Judge granting a temporary injunction was held by a Full Bench of Allahabad High Court in Standard Glass Beads Factory and Anr.v. Shri Dhar and Ors., A.I.R. [1960] All. 692 1960 Indlaw ALL 240 as not being an interlocutory order having decided some rights of the parties and was, therefore, appealable. To, the same, effect are the decisions of the Calcutta High Court in Union of India v. Khetra Mohan Banerjee, A.I.R. [1960] Cal. 190 1959 Indlaw CAL 88, of the Lahore High Court in Gokal Chand v. Sanwal Das and others, A.I.R. [1920] Lah. 326 of the Delhi High Court in Begum Aftab Zamani v. Shri Lal Chand Khanna, A.I.R. 1969 Delhi 85 1968 Indlaw DEL 56 and of the Jammu and Kashmir High Court in Har Parshad Wali and Anr. v. Naranjan Nath Matoo and others, A.I.R. 1959 J. and K. 139.

13. Applying the aforesaid tests, let us now see whether the order impugned in the instant case can be said to be an interlocutory order as held by the High Court. In the first place, so far as the appellants are concerned, the police had submitted its final report against them and they were released by the Judicial Magistrate. A revision against that order to the Additional Sessions Judge preferred by the complainant had failed. Thus the appellants, by virtue of the order of the Judicial Magistrate as' affirmed by the Additional Sessions Judge ,acquired a valuable right of not being put on trial unless a proper order was made against them. Then came the complaint by respondent No. 2 before the Judicial Magistrate which was also dismissed ,on merits. The Sessions Judge in revision, however, set aside the order dismissing the complaint and ordered further inquiry. The Magistrate on receiving the order of the Sessions Judge summoned the appellants straightaway which meant that the appellants were to, be put on trial. So long as the Judicial Magistrate had not passed this order, no proceedings were started against the appellants, nor were ,any such proceedings pending against them. It was only with the passing of the impugned order that the proceedings started and the question of the appellants being put up for trial arose for the first time.

14. This was undoubtedly a valuable right which the appellants possessed and which was being denied to them by the impugned order. It cannot, therefore, be said that the appellants were not at all prejudiced, ,or that any right of theirs was not involved by the impugned order. It is difficult to

hold that the impugned order summoning the appellants straightaway was merely an interlocutory order which could not be revised by the High Court under sub-ss. (1) and (2) of s. 397 of the 1973 Code. The order of the Judicial Magistrate 'summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded, was undoubtedly a matter of moment, and a valuable right of the appellants had been taken away by the Magistrate's passing an order prima facie in a mechanical fashion without applying his mind. We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial.

15. For these reasons, the order of the Judicial Magistrate, 1st Class, Karnal dated November 15, 1976 cannot be said to be an interlocutory order and does not fall within the mischief of sub-s. (2) of s. 397 of the 1973 Code and is not covered by the same. That being the position, a revision against this order was fully competent under S. 397(1) or under s. 482 of the same Code, because the scope of both these sections in a matter of this kind is more or less the same.

16. As we propose to remand this case to the High Court to decide the revision on merits, we refrain from making any observation regarding the merits of the case. The appeal is, therefore, allowed, the order of the High Court dated February 14, 1977 refusing to entertain the revision petition of the appellants is 'set aside. The High Court is directed to admit the revision petition filed by the appellants and to decide it on merits in accordance with the law.

Appeal allowed.

Madhu Limaye v State of Maharashtra
(1977) 4 SCC 551

Case No : Cr.A. No. 81 of 1977 (Arising as an appeal by Special Leave from the Judgment and Order Dt. 10 November 1975 of the Bombay High Court in Cr.R.A. 180 of 1975).

Bench : N.L. Untwalia, P.K. Goswami, D.A. Desai

Summary : Criminal - Practice & Procedure - Criminal Procedure Code, 1973, ss. 199(2), 199(4)(a), 397 (1) and (2) and 482 - Indian Penal Code, 1860, s. 500 - Statement of defamation - Trial challenged by appellant, but Sessions Judge rejecting all contentions framed charge - Revision dismissed by High Court on maintainability of revision application - ***Whether revision to HC against order of Subordinate Judge is expressly barred u/s. 397(2) CrPC, 1973?*** - Held, ***situation which is an abuse of process of Court or for purpose of securing ends of justice interference by HC is absolutely necessary, then nothing contained in s. 397(2) can limit or affect exercise of inherent power by HC, therefore, case falls for exercise of power u/s. 482 CrPC, 1973 - Even assuming, although not accepting, that invoking revisional power of HC is impermissible*** - Appeal allowed.

The Judgment was delivered by : N. L. Untwalia, J.

1. This is an appeal by special leave from the order of the Bombay High Court rejecting the application in revision filed by the appellant u/s. 397(1) of the Code of Criminal Procedure, 1973 hereinafter to be referred to as the 1973 Code or the new Code, on the ground that it was not maintainable in view of the provision contained in subs. (2) of section 397. The High Court has not gone into its merits.

2. It is not necessary to state the facts of the case in any detail for the disposal of this appeal. A bare skeleton of them will suffice. In a press conference held at New Delhi on the 27th September, 1974 the appellant is said to have made certain statements and handed over a press hand-out containing allegedly some defamatory statements concerning Shri A. R. Antulay, the then Law Minister of the Government of Maharashtra. The said statements were published in various newspapers. The State Government decided to prosecute the appellant for an offence u/s. 500 of the Indian Penal Code as it was of the view that the Law Minister was defamed in respect of his conduct in the discharge of his public functions. Sanction in accordance with s. 199 (4) (a) of the 1973 Code was purported to have been accorded by the State Government.

3. Thereupon the Public Prosecutor filed a complaint in the Court of the Sessions Judge, Greater Bombay. Cognizance of the offence alleged to have been committed by the appellant was taken by the Court of Sessions without the case being committed to it as permissible under sub-s. (2) of section 199. Process was issued against the appellant upon the said complaint.

4. The Chief Secretary to the Government of Maharashtra was examined on the 17th February, 1975 as a witness in the Sessions Court to prove the sanction order of the State Government. Thereafter on tile 24th February, 1975 Shri Madhu Limaye, the appellant, filed an application to dismiss the complaint on the ground that the Court had no jurisdiction to entertain the complaint. The stand taken on behalf of the appellant was that allegations were made against Shri Antulay in relation to what he had done in his personal capacity and not in his capacity of discharging his functions as a Minister. Chiefly on that ground and on some others, the jurisdiction of the Court to proceed with the trial was challenged by the appellant.

5. The appellant raised three contentions in the Sessions Court and later in the High Court assailing the validity and the legality of the trial in question. They are :-

6. That even assuming the allegations made against Shri Antulay were defamatory, they were not in respect of his conduct in the discharge of his public functions and hence the aggrieved person could file a complaint in the Court of a competent Magistrate who after taking cognizance could try the case or commit it to the Court of Sessions if so warranted in law. The Court of Sessions could not take cognizance without the committal of the case to it.

7. The sanction given was bad in as much as it was not given by the State Government but was given by the Chief Secretary.

8. The Chief Secretary had not applied his mind to the entire conspectus of the facts and had given the sanction in a mechanical manner. The sanction was bad on that account too. The Sessions Judge rejected all these contentions and framed a charge against the appellant u/s. 500 of the Penal Code. The appellant, thereupon, challenged- the order of the Sessions Judge in the revision filed by him in the High Court. As already 'stated, without entering into the merits of any of the contentions raised by the appellant, it upheld the preliminary objection as to the maintainability of the revision application. Hence this appeal.

9. The point which falls for determination in this appeal is squarely covered by a decision of this Court to which one of us (Untwalia was a party in Amar Nath and Others v. State of Haryana & Anr 1977 Indlaw SC 270 But on a careful consideration of the matter and on hearing learned counsel for the parties in this appeal we thought it advisable to enunciate and reiterate the view taken by two learned judges of this Court in Amar Nath's case1977 Indlaw SC 270 but in a somewhat modified and modulated form. In Amar Nath's case1977 Indlaw SC 270, as in this, the order of the Trial Court issuing process against the accused was challenged and the High Court was asked to quash the criminal proceeding either in exercise of its inherent power u/s. 482 of the 1973 Code corresponding to section 561A of' the Code of Criminal Procedure, 1898-hereinafter called the 1898 Code or the old Code, or u/s. 397(1) of the new Code corresponding to s. 435 of the old Code. Two points were decided in ***Amar Nath's case1977 Indlaw SC 270*** in the following terms :-
"While we fully agree with-the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-s. (2) of s. 397 of the 1973 Code *the inherent powers contained in s. 482 would not be available to defeat the bar contained in s. 397(2)."*

10. The impugned order of the Magistrate, however, was not an interlocutory order. For the reasons stated hereinafter we think that the statement of the law apropos point no. 1 is not quite accurate and needs some modulation. But we are-going to reaffirm the decision of the Court on the second point. Under s. 435 of the 1898 Code the High Court had the power to "call for and examine the record of any proceeding before any inferior Criminal Court 'situate within the local limits of its jurisdiction for the purpose of satisfying itself 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", and then to pass the necessary orders in accordance with the law engrafted in any of the sections following section 435. Apart from the revisional power, the High Court possessed and possesses the inherent powers to be exercised ex debito justitiae to do the real and the substantial 'justice for the administration of which alone Courts exist. In express language this power was recognized and saved in section 561A of the old Code. U/s. 397(1) of the 1973 Code, revisional power has been conferred on the High Court in terms which are identical to those found in s. 435 of the 1898 Code. Similar is the position apropos the inherent powers of the High Court. We may read the language

11. Criminal Appeal No. 124 of 1977 decided on the 29th July, 1977. of s. 482 (corresponding to section 561A of the old Code) of the Code. It says

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

12. At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions :-

13. That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party ;

14. That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

15. That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

16. In most of the cases decided during several decades the inherent power of the High Court has been invoked for the quashing of a criminal proceeding on one ground or the other. Sometimes the revisional jurisdiction of the High Court has also been resorted to for the same kind of relief by challenging the order taking cognizance or issuing processes or framing charge on the grounds that the Court had no jurisdiction to take cognizance and proceed with the trial, that the issuance of process was wholly illegal or void, or that no charge could be framed as no offence was made out on the allegations made or the evidence adduced in Court. In the background aforesaid we proceed to examine as to what is the correct position of law after the introduction of a provision like sub s. (2) of s. 397 in, the 1973 Code.

17. As pointed out in Amar Nath's case1977 Indlaw SC 270 (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally, More often than not, the revisional power of the High Court was resorted to in relation to inter- locutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2), in section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of section 482, however, it would follow that nothing in the Code, which would include subs. (2) of s. 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is-the harmonious way out ? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-s. (2) of s. 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order.

18. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code. the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation

which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in s. 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction. then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of Autrefois Acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order. does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end ? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure, the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with s. 482 of the 1973 Code. even assuming. although not accepting, that invoking the revisional power of the High Court is impermissible. In R. P. Kapur v. The State of Punjab ([1960] 3 SCR. 388) 1960 Indlaw SC 471 Gajendragadkar J.. as he then was, delivering the judgment of this Court pointed out, if we may say so with respect, very succinctly the scope of the inherent power of the High Court for the purpose of quashing a criminal proceeding. Says the learned Judge :--

"Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to. prove the charge'. In dealing with this class of cases it is important to bear in- mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may not support the accusation in question. In exercising its jurisdiction under s. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to

invoke the High Court's inherent Jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

19. We think the law as stated above is not affected by s. 397(2) of the new Code. It still holds good in accordance with '.section 482.

20. Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606

"..... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of two words must therefore be considered separately in relation to the particular purpose for which it is required." In para 1607 it is said :

"In general a judgment or order which determines the principal matter in question is termed "final"."

21. In para 1608 at pages 744 and 745 we find the words

"An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the- final judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

22. In S. Kuppuswami Rao v. The King([1947] Federal Court Reports, 1) Kania C. J., delivering the judgment of the Court has referred to some English decisions at pages 185 and 186. Lord Esher M. R. said in Salaman v. Warner([1891] 1 Q.B. 734) "If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory." To the same effect are the observations quoted from the judgments of Fry L. J. and Lopes L. J. Applying the said test, almost on facts similar to the ones in the instant case, it was held that the order in revision passed by the High Court (at that time, there was no bar like s. 397 (2) was not a "final order" within the meaning of s. 205 (1) of the Government of India Act, 1935. It is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. In our opinion if this strict test were to be applied in interpreting the words "interlocutory order" occurring in s. 397(2), then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by s. 397(1). On such a 'strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the, 1898 Code. In what cases then the High Court will examine the legality or the propriety of an order or the legality of any proceeding of an inferior Criminal court ? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies ? Such cases will be very few and far between. It has been pointed out repeatedly, vide, for example, The River Wear Commissioners v.

William Adamson([1876-77] 2 A.C. 743) and R. M. D. Chamarbaugwalla v. The Union of India ([1957] S.C.R. 930) 1957 Indlaw SC 49 that although the word occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the legislature. On the one hand, the legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami's case (supra), but, yet it may not be an interlocutory order-pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we, think that the bar in sub-s. (2) of s. 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Art. 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of s. 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well-known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of subs. (2) of section 397. In our opinion it must be taken to be an order of the type falling in the middle course.

23. In passing, for the sake of explaining ourselves, we may refer to what has been said by Kania C. J. in Kuppuswami's case by quoting a few words from Sir George Lowndes in the case of Abdul Rahman V. D. K. Cassim and Sons([1933] 60 Indian Appeals, 76)1932 Indlaw PC 54. The learned law Lord said with reference to the order under consideration in that case :

24. The effect of the order from which it is here sought to appeal was not to dispose finally of the rights of the parties. It no doubt decided an important, and even a vital, issue in the case, but it left the suit alive, and provided for its trial in the ordinary way. Many a time a question arose in India as to what is the exact meaning of the phrase "case decided" occurring in s. 1 1 5 of the Code of Civil Procedure. Some High Courts had taken the view that it meant the final order passed on final determination of the action. Many others had however, opined that even interlocutory orders were covered by the said term. This Court struck a mean and it did not approve of either of the two extreme lines. In Baldevdas v. Filmistan Distributors (India) Pvt. Ltd 1969 Indlaw SC 184 it has been pointed out :

"A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy :"

25. We may give a clear example of an order in a civil case which may not be a final order within the meaning of Art. 133 (1) of the Constitution, yet it will not be purely or simply of an interlocutory character. Suppose for example, a defendant raises the plea of jurisdiction of a particular Court to try the suit or the bar of limitation and succeeds, then the action is determined finally in that Court. But if the point is decided against him the suit proceeds. Of course, in a given case the point raised may be such that it is interwoven and interconnected with the other issues in the case, and that it may not be possible to decide it under Order 14 Rule 2 of the Code of Civil Procedure as I preliminary point of law. But, if it is a pure point of law and is decided one way or the other, then the order deciding such a point may not be interlocutory, albeit-may not be final either. Surely, it will be a case decided, as pointed out by this Court in some decisions, within the meaning of s. 115 of the Code of Civil

Procedure. We think it would be just and proper to apply the same kind to test for finding out the real meaning of the expression 'interlocutory order' occurring in s. 397(2).

26. In Amar Nath's case1977 Indlaw SC 270, reference has been made to the decision of this Court in Mohan Lal Magan Lal Thacker v. State of Gujarat([1968] 2 S.C.R. 685) 1967 Indlaw SC 399 After an enquiry u/s. 476 of the 1898 Code an order was made directing the filing of a complaint against the appellant. It was affirmed by the High Court. The matter came to this Court on grant of a certificate u/art. 134(1) (c). A question arose whether the order was a "final order" within the meaning of the said constitutional provision. Shelat J., delivering the judgment on behalf of himself and two other learned Judges, said that it was a final order. The dissenting judgment was given by Bachawat J., on behalf of himself find one other learned Judge. In the majority decision four tests were culled out from some English decisions. 'they are found enumerated. One of the tests is "If the order in question is reversed would the action have to go on ?" Applying that test to the facts of the instant case it would be noticed that if the plea of the appellant succeeds and the order of the Sessions Judge is reversed, the criminal proceeding as initiated and instituted against him cannot go on. If, however, he loses on the merits of the preliminary point the proceeding will go on. Applying the test of Kuppuswami case such an order will not be a final order. But applying the fourth test noted in Mohan Lal's case it would be a final order. The real point of distinction, however, is to be found in the judgment of Shelat, J.The passage runs thus :

"As observed in Ramesh v. Patni-[1966] 3 S.C.R. 198 1966 Indlaw SC 395 *the finality of that order was not to be judged by correlating that order with the controversy in the complaint,viz. whether the appellant had committed the offence charged against him therein. The fact that that controversy still remained alive is irrelevant."*

27. The majority view is based upon the distinction pointed out in the above passage and concluding that it is a final order within the meaning of Art. 134(1) (c). While Bachawat J., said : *"It is merely a preliminary step in the prosecution and therefore an interlocutory orders."*

28. Even though there may be a scope for expressing different opinions apropos the nature of the order which was under consideration in Mohan Lars case, in our judgment, undoubtedly, an order directing the filing of a complaint after enquiry made under a provision of the 1973 Code, similar to s. 476 of the 1898 Code will not be an interlocutory order within the meaning of 's. 397(2). The order will be clearly revisable by the High Court. We must, however, hasten to add that the majority decision in Mohan Lal's case treats such an order as an order finally concluding the enquiry started to find out whether a complaint should be lodged or not, taking the prosecution launched on the filing of the complaint as a separate proceeding. From that point of view the matter under discussion may not be said to be squarely covered by the decision of this Court in Mohan Lal's case. Yet for the reasons already alluded to, we feel no difficulty in coming to the conclusion, after due consideration, that an order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of s. 397(2).

29. We may also refer to the decision of this Court in Parmeshwari Devi v. State and Anr.([1977] 2 S.C.R. 160) 1976 Indlaw SC 277 that an order made in a criminal proceeding against a person who is not a party to the enquiry or trial and which adversely affected him is not an interlocutory order within the meaning of s. 397 (2). Referring to a passage from the decision of this Court in Mohan Lals case- the passage which is to be found in Halsbury's Laws of England, Volume 22, it has been said by Shinghal J., delivering the judgment of the Court, at page 164 :

"It may thus be conclusive with reference to the stage at which it is made, and it may also be conclusive as to a person who is not a party to the enquiry or trial, against whom it is directed."

30. As already mentioned, the view expressed in Mohan Lal's case may be open to debate or difference. One such example is to be found in the decision of this Court in Prakash Chand Agarwal & Ors. v. M/s Hindustan Steel Ltd 1970 Indlaw SC 160wherein it was held that an order of the High Court setting aside an ex-parte decree in the suit and restoring the suit to the file of the Trial Court is not a final order within the meaning of Article 133. It is to be noticed that if the High Court would have refused to set aside the ex-parte decree, the proceeding for setting it aside would have finally ended and on some of the principles culled out by the majority in Mohan Lars case, such an order would have been a final order. We are, however, not under any necessity to enter into this controversial arena. In our opinion whether the type of the order aforesaid would be a final order or not, surely it will not be an interlocutory order within the meaning of sub-s. (2) of s. 397 of the 1973 Code. Before we conclude we may point out an obvious, almost insurmountable, difficulty in the way of applying literally the test laid down in Kuppuswami Rao's case and in holding that an order of the kind under consideration being not a final order must necessarily be an interlocutory one. If a complaint is dismissed u/s. 203 or u/s. 204(4), or the Court holds the proceeding to be void or discharges the accused, a revision to the High Court at the instance of the complainant or the prosecutor would be competent, otherwise it will make s. 398 of the new Code otiose. Does it stand to reason, then, that an accused will have no remedy to move the High Court in revision or invoke its inherent power for the quashing of the criminal proceeding initiated upon a complaint or otherwise and which is fit to be quashed on the face of it ? The legislature left the power to order further inquiry intact in 'section 398. Is it not, then, in consonance with the sense of justice to leave intact the remedy of the accused to move the High Court for setting aside the order adversely made against him in similar circumstances and to quash the proceeding ? The answer must be given in favour of the just and reasonable view expressed by us above.

31. For the reasons stated above, we allow this appeal, set aside the judgment and order of the High Court and remit the case back to it to dispose of the appellant's petition on merits, in the manner it may think fit and proper to do in accordance with the law and in the light of this judgment.

Appeal allowed.
