

Code of Criminal Procedure, 1973

Chapter 29 - Appeals

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

1[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]

1. Inserted vide Code of Criminal Procedure (Amendment) Act 2008 to be effective from 31.12.2009 vide Notification No. S.O. 3313(E) dated 30.12.2009.

Section 373 - Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour

Any person,

(i) who has been ordered under section 117 to give security for keeping the peace or for good behaviour, or

(ii) who is aggrieved by any order refusing to accept or rejecting a surety under section 121,

may appeal against such order to the Court of Session:

Provided that nothing in this section, shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (4) of section 122.

Section 374 - Appeals from convictions

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) 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 1 [has been passed against him or against any other person convicted at the same trial]; may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,-

(a) convicted on a trial held 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, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session.

STATE AMENDMENTS

2 Punjab and Union Territory of Chandigarh:

In section 374, in sub-section (3), for the words "Magistrate of the first class" the words "Executive Magistrate", shall be substituted.

1. Substituted by Act 45 of 1978, section 28. for "has been passed "(w.e.f. 18-12-1978).

2. Vide Punjab Act. 22 of 1983 (w.e.f. 27-6-1983).

Section 375 - No appeal in certain cases when accused pleads guilty

Notwithstanding anything contained in section 374, 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 376 - No appeal in petty cases

Notwithstanding anything contained in section 374, 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 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 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be 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.

Section 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 [2](#)[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";

(b) in sub-section (3), for the words "the High Court", the words "the Court of Session or, as the case may be, the High Court" shall be substituted]

(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, [1](#)[the Central Government may also direct] the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court 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.

1. Substituted by Act 45 of 1978, section 29, for "the Central Government may direct" (w.e.f. 18-12-1978).

2. Substituted by vide The Code of Criminal Procedure (Amendment) Act, 2005. Earlier the text was as under:

"an appeal to the High Court against the sentence on the ground of its inadequacy"

Section 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),

2 [(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 non-bailable 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 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.";].

(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, 3 [the Central Government may, subject to the provisions of sub-section (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 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.

(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).

1. Inserted by Act 45 of 1978, section 30 (w.e.f. 18-12-1978).

2. Substituted vide The Code of Criminal Procedure (Amendment) Act, 2005. Earlier the text was as under:

"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 1 [or an order of acquittal passed by the Court of Session in revision]"

3. Substituted vide The Code of Criminal Procedure (Amendment) Act, 2005. Earlier the text was as under:

"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"

Section 379 - Appeal against conviction by High Court in certain cases

Where the High Court has, on appeal reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term often years or more, he may appeal to the Supreme Court.

Section 380 - 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 of order has been passed in respect of any of such person, all or any of the persons convicted at such trial shall have a right of appeal.

Section 381 - Appeal to Court of Session how heard

(1) Subject to the provisions of subsection (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.

Section 382 - Petition of appeal

Every appeal shall be made in the form of a petition in writing presented by the appellant of 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.

STATE AMENDMENT

1Andaman and Nicobar Islands and Lakshadweep:

Section 382 shall be re-numbered as sub-section (1) of that section, and sub-section (1) as so re-numbered the following provisos and Explanation shall be added, namely:-

"Provided that where it is not practicable to file the petition of appeal to the proper Appellate Court, the petition of appeal may be presented to the Administrator or to an Executive Magistrate, not below the rank of Sub-Divisional Magistrate, he shall record thereon the date of presentation and, if he is satisfied that, by reason of the weather, transport or other difficulties, it is not possible for the appellant to obtain, from the proper Appellate Court, orders for the suspension of sentence or for bail, he may, in respect of such appeal, or an appeal forwarded to him under section 383, exercise all or any of the powers of the proper Appellate Court and sub-section (1) of section 389 with regard to suspension of sentence or release of convicted person on bail:

Provided further that the order so made by Administrator or the Executive Magistrate shall have effect until it is reversed or modified by the proper Appellate Court.

Explanation .-For the purposes of the provisos to this section and section 383, 'Administrator' in relation to a Union territory means the Administrator appointed by the President under article 239 of the Constitution, for that Union territory."

In section 382 after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:-

(2) For purposes of computation of the period of limitation, and for all other purposes, an appeal presented to an Administrator or an Executive Magistrate under sub-section (1) or as the case may be, under section 383, shall be deemed to be an appeal presented to the proper Appellate Court."

1. Vide Regulation 1 of 1974, Section 4 (w.e.f. 30-3-1974).

Section 383 - Procedure when appellant in jail

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.

STATE AMENDMENT

1Andaman and Nicobar Islands and Lakshadweep:

In section 383, the following words shall be inserted at the end, namely:-

"or if, by reason of the weather, transport or other difficulties, it is not possible to forward them to the proper Appellate Court they shall be forwarded to the Administrator or an Executive Magistrate, not below the rank of a Sub-Divisional Magistrate, who shall, on receipt of such petition of appeal and copies, record thereon the date of receipt thereof and thereafter forward the same to the proper Appellate Court.

1. Vide Regulation 1 of 1974, Section 5 (w.e.f. 30-3-1974).

Section 384 - Summary dismissal of appeal

(1) 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:

Provided that-

(a) 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;

(b) 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;

(c) no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

(4) Where an appeal presented under section 383 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 382 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.

Section 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, 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 or 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.

Section 386 - Powers of the Appellate Court

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) 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;

(c) in an appeal for enhancement of sentence

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) 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;

(d) in an appeal from any other order, alter or reverse such order;

(3) make any amendment or any consequential or incidental order that may be just or proper;

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further 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.

Section 387 - Judgments of subordinate Appellate Court

The rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate:

Provided that unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Section 388 - Order of High Court on appeal to be certified to lower Court

(1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed and if such Court is that of a Judicial Magistrate other than the Chief Judicial Magistrate, the High Court's judgment or order shall be sent through the Chief Judicial Magistrate; and if such Court is that of an Executive Magistrate, the High Court's judgment or order shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

Section 389 - Suspension of sentence pending the appeal; release of appellant on bail

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

1[Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release: Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.]

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

1. Inserted vide The Code of Criminal Procedure (Amendment) Act, 2005.

Section 390 - Arrest of accused in appeal from acquittal

When an appeal is presented under section 378, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.

Section 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.

Section 392 - 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:

Provided 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 re-heard and decided by a larger Bench of Judges.

Section 393 - Finality of judgments and orders on appeal

Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the case provided for in section 377, section 378, sub-section (4) of section 384 or Chapter XXX:

Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits.

- (a) an appeal against acquittal under section 378, arising out of the same case, or
- (b) an appeal for the enhancement of sentence under section 377, arising out of the same case.

Section 394 - Abatement of appeals

- (1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.
- (2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation. In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister.