

REVISIONAL JURISDICTION

CIVIL PROCEDURE CODE

Section 115

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or material irregularity,

the High Court may make such order in the case as it thinks fit.

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Section 435

(1) The High Court or any Sessions Judge or District Magistrate or any Sub-Divisional Magistrate empowered by the Provincial Government in this behalf, may call for and examine the record of any proceeding, before any inferior Criminal Court situated 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 and may, when calling for such record, direct that the execution of any sentence 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 exercising original or appellate jurisdiction, shall be deemed to be inferior to the Session Judge

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Section 435—*contd.*

for the purposes of this subsection and of section 437.

(2) If any Sub-Divisional Magistrate acting under subsection (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

* * * *

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

Section 436

On examining any record under section 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into

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Section 436—*contd.*

any complaint which has been dismissed under section 203 or sub-section (3) 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.

Section 437

When, on examining the record of any case under section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate, may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial

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Section 437—*contd.*

upon the matter of which he has been, in the opinion of the Sessions Judge or District Magistrate, improperly discharged :

Provided as follows:—

(a) that the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made ;

(b) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to inquire into such offence.

Section 438

(1) The Sessions Judge or District Magistrate may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if

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Section 438—*contd.*

the accused is in confinement, that he be released on bail or on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Session 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 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 sections 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 section 429.

(2) No order under this section shall be made to the

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Section 439—*contd.*

prejudice of the accused un-less he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court the accused has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the First Class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

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

(6) Notwithstanding anything contained in this section, any convicted person to whom

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Section 439—*contd.*

an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.

Section 440

No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision :

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).

REFERENCE

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Section 113

Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the Court, and the High Court, may make such order thereon as it thinks fit.

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Section 432

A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Section 433

(1) When a question has been so referred, 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 Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

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

REVIEW

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Section 114

Subject as aforesaid, any person considering himself aggrieved—

No provision for Review.

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred ;

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes;

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

APPEALS

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Section 96

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

Section 100

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely :

(a) the decision being contrary to law or to some usage having the force of law ;

(b) the decision having failed to determine some

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Section 404

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.

Section 407

(1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

(2) The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first subordinate to him and empowered by the Provincial Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate, or if already presented to the

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Section 100—*contd.*

material issue of law or usage having the force of law ;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

Section 104

(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders :

(a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court;

(b) an order on an award stated in the form of a special case ;

(c) an order modifying or correcting an award ;

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Section 407—*contd.*

District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Section 408

Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the First Class, or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by a Magistrate of the First Class, may appeal to the Court of Session :

Provided as follows:

* * *

(b) When in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes any sentence of imprisonment for a term exceeding four years, or any sentence of transportation, the appeal of all or any

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Section 104—contd.

(d) an order filing or refusing to file an agreement to refer to arbitration ;

(e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration ;

(f) an order filing or refusing to file an award in an arbitration without the intervention of the Court;

(ff) an order under section 35A ;

(g) An order under Section 95 ;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree ;

(i) any order made under rules from which an appeal is expressly allowed by rules :
Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.

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Section 408—contd.

of the accused convicted at such trial shall lie to the High Court;

(c) when any person is convicted by a Magistrate of an offence under section 124A of the Indian Penal Code, the appeal shall lie to the High Court.

Section 409

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 Additional Sessions Judge shall hear only such appeals as the Provincial Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.

Section 410

Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.

Section 411

Any person convicted on a trial held by a Presidency

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Section 104—*contd.*

(2) No appeal shall lie from any order passed in appeal under this section.

Section 105

(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

Section 109

Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provi-

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Section 411—*contd.*

Magistrate may appeal to the High Court, if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

Section 411A

(1) Without prejudice to the provisions of section 449 any person convicted on a trial held by a High Court in the exercise of its original criminal jurisdiction may, notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the Letters Patent of any High Court, appeal to the High Court:

(a) against the conviction on any ground of appeal which involves a matter of law only;

(b) with the leave of the Appellate Court, or upon the certificate of the Judge who tried the case that it is a fit case for appeal, against the conviction on any ground of appeal which involves a matter of fact only, or a matter of mixed law and fact, or any other ground which appears to

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Section 109—*contd.*

sions hereinafter contained, an appeal shall lie to His Majesty in Council—

(a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction ;

(b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction ; and

(c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

Section 110

In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question

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Section 411 A—*contd.*

the Appellate Court to be a sufficient ground of appeal; and

(c) with the leave of the appellate Court, against the sentence passed unless the sentence is one fixed by law.

(2) Notwithstanding anything contained in section 417, the Provincial Government may direct the Public Prosecutor to present an appeal to the High Court from any order of acquittal passed by the High Court in the exercise of its original criminal jurisdiction, and such appeal may, notwithstanding anything contained in section 418, or section 423, sub-section (2), or in the Letters Patent of any High Court, but, subject to the restrictions imposed by clause (b) and clause (c) of sub-section (1) of this section on an appeal against a conviction, lie on a matter of fact as well as a matter of law.

(3) Notwithstanding anything elsewhere contained in any Act or Regulation, an appeal under this section shall be heard by a Division Court of

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Section 110—*contd.*

to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

Section 111.

Notwithstanding anything contained in section 109, no appeal shall lie to His Majesty in Council—

(a) from the decree or order of one Judge of a High Court constituted by His Majesty by Letters Patent, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being ;

or

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Section 411 A—*contd.*

the High Court composed of not less than two judges, being judges other than the judge or judges by whom the original trial was held; and if the constitution of such a Division Court is impracticable, the High Court shall report the circumstances to the Provincial Government which shall take action with a view to the transfer of the appeal under section 527 to another High Court.

(4) Subject to such rules as may from time to time be made by His Majesty in Council in this behalf, and to such conditions as the High Court may establish or require, an appeal shall lie to His Majesty in Council from any order made on appeal under sub-section (1) by a Division Court of the High Court in respect of which order the High Court declares that the matter is a fit one for such appeal.

Section 412

Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a High Court, a Court of Session or any Presidency Magistrate or Magistrate of the

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(b) from any decree from which under section 102 no second appeal lies.

Section 111 A

Where a certificate has been given under section 205 (1) of the Government of India Act, 1935, the three last preceding sections shall apply in relation to appeals to the Federal Court as they apply in relation to appeals to His Majesty in Council, and accordingly references to His Majesty shall be construed as references to the Federal Court:

Provided that—

(a) so much of the said sections as delimits the cases in which an appeal will lie shall be construed as delimiting the cases in which an appeal will lie without the leave of the Federal Court otherwise than on the ground that a substantial question of law as to the interpretation of the said Act, or any Order in Council made thereunder, has been wrongly decided;

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first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

Section 413

Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a High Court passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which a Court of Session * * * passes a sentence of imprisonment not exceeding one month only or in which a court of Session or District Magistrate or other Magistrate of the first class passes a sentence of fine not exceeding fifty rupees only

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CIVIL PROCEDURE CODE**Section 111 A**—*contd.*

(b) in determining under clause (c) of section 109 whether the case is a fit one for appeal, and, under section 110, whether the appeal involves a substantial question of law, any question of law as to the interpretation of the said Act, or any Order in Council made thereunder, shall be left out of account.

