

(2-A) [Subject to the provisions of section 382-A] when any person other than a person accused of a non-bailable offence is sentenced to imprisonment by a Court, and an appeal lies from that sentence, the Court may if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him 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.

(2-B) Where a High Court is satisfied that a convicted person has been granted special leave to appeal by the Supreme Court against any sentence which it has imposed or maintained, it may if it so thinks fit order that pending the appeal the sentence or order appealed against be suspended, and also, if said person is in confinement, that he be released on bail.

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

427. Arrest of accused in appeal from acquittal. When an appeal is presented under section 411A, sub-section (2), or section 417, 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.

428. Appellate Court may take further evidence or direct 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 an 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) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken

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

429. Procedure where Judge of Court of Appeal are equally divided. When the Judge composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

430. Finality of orders on appeal. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

431. Abatement of Appeals. Every appeal under section 411 A sub-section (2), or section 417 shall finally abate on the death of the accused, any every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII - OF REFERENCE AND REVISION

432 and 433. [Reference by Presidency Magistrate to High Court. Disposal of case according to decision of High Court and direction as to costs]. Omitted by A.O., 1949, Schedule.

434. [Power to reserve questions arising in original jurisdiction of High Court and procedure when question reserved]. Omitted by the Criminal Procedure (Amendment) Act, 1943 XXVI of 1943). S. 6.

435. Power to call for records of inferior Courts. (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 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 examination of the record.

[Explanation. All Magistrates, shall be deemed to be inferior to the Session Judge for the purposes of this sub-section.]

(2) If any Sub-divisional Magistrate acting under sub-section (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.

(3) [* * * * *]

(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.

[436. Power to order further inquiry. On examining any record under section 435 or otherwise-

(a) the High Court may direct the Sessions Judge to require a District Magistrate subordinate to him to make, and the Sessions Judge himself may direct any Judicial Magistrate subordinate to him to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204 [-].

(b) The High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Executive Magistrates subordinate to him to make further inquiry into any proceeding in which order of discharge or release has been made under section 119.]

Proviso.- [Proviso omitted by Act XXI of 1976]

437. [Omitted by Act XXI of 1976.]

[438. Report to High Court. (1) The [...] 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 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 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 Session

Judge.]

439. 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 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 prejudice of the accused unless 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 Magistrate [...], 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 Magistrate of the first class.

(4) Nothing in this section shall be deemed to authorize a High Court:

(a) to convert a finding of acquittal into one of conviction; or

(b) to entertain any proceedings in revision with respect to an order made by the Sessions Judge under section 439-A.]

(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 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.

439-A. Sessions Judge's powers of revision. (1) In the case of any proceeding before a Magistrate the record of which has been called for by the Sessions Judge or which otherwise comes to his knowledge, the Sessions Judge may exercise any of the powers conferred on the High Court by section 439.

(2) 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 under any general or special order of the Session Judge].

440. Optional with Court to hear parties. 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).

441. [Statement by Presidency Magistrate of grounds of his decision to be considered by High Court]. Omitted by A.O., 1949 Schedule.

442. High Court's-order to be certified to lower Court or Magistrate. When a case is revised under this Chapter by the High Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.