

PART VII - OF APPEAL, REFERENCE AND REVISION - CHAPTER XXXI - OF APPEALS

404. Unless otherwise provided, no appeal to lie. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this or by any other law for the time being in force.

405. Appeal from order rejecting application for restoration of attached property. An person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

406. Appeal from order requiring security for keeping the peace or for good behavior. Any person who has been ordered by a Magistrate under section 118 to give security for keeping the peace or for good

behavior may appeal against such order: to the Court of Session:

[Provided that the Provincial Government may, by notification in the official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District

Magistrate shall lie to the District Magistrate and not the Court of Session:

Provided, further, that nothing in this section shall apply to person the proceedings against whom are laid

before a Sessions Judge in accordance with the provisions of subsection (2) or sub-section (3A) of section 123.]

[406-A. Appeal from order refusing to accept or rejecting a surety. Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order to the Court of Session].

[407. Appeal from sentence of Magistrate of the second or third class. (1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 may

appeal to the District Magistrate.

(2) Transfer of appeals to first class Magistrate. 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 class 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 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.]

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408. Appeal from sentence of Assistant Sessions Judge or [Judicial Magistrate]. Any person convicted on a trial held by an Assistant Sessions Judge, [or any Judicial Magistrate] or any person sentenced under section 349 [...] may appeal to the Court of Session:

Provided as follows:

[(a) Clause (a) Rep. by Act 12 of 1923. S. 23.]

(b) when in any case an Assistant Sessions Judge [...] passes any sentence of imprisonment for a term exceeding four years, [...] the appeal of all or any 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 124-A of the Pakistan Penal Code, the appeal shall lie to the High Court.

[409. Appeal to Court of Session how heard. Subject to the provisions of this section, an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge or an Assistant Sessions Judge;

Provided that an Additional Sessions Judge shall heard 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.

Provided further that no such appeal shall hear by an Assistant Sessions Judge unless the appeal is of a

person convicted on a trial held by a Magistrate of the second class or third class.]

410. Appeal from sentence of Court of Session. Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.

411. [Appeal from sentence of Presidency Magistrate}. Omitted by A.O., 1949, Sch.

411-A. Appeal from sentence of High Court. (1) Except in cases in which an appeal lies to the Supreme Court under Article 185 of the Constitution 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 the appellate Court to be a sufficient

ground of appeal; and

(c) with the leave of 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.

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(3) Notwithstanding anything elsewhere contained in any Act or Regulation, an appeal under this section shall be heard by a Division Court of the High Court composed of not less than two judges, being judges other than the judge or judge by whom the original trial was held and if the constitution of such a Division

Court is impracticable, the High Court 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 the Supreme Court in this behalf, and to such conditions as the High Court may establish or require, an appeal shall lie to the Supreme Court from any order made on appeal under sub-section (1) by a Divisional Court of the High Court in respect of which order the High Court declares that the matter is a fit one for such appeal.

412. No appeal in certain cases when accused pleads guilty. Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by a High Court, a Court of

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

413. No appeal in petty cases. 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 [a] Magistrate

of the first class passes a sentence of fine not exceeding fifty rupees only.

Explanation. There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence or imprisonment has also been passed.

414. No appeal from certain summary convictions. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate

empowered to act under section 260 passes a sentence of fine not exceeding two hundred rupees only.

415. Proviso to sections 413 and 414. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any punishment therein mentioned is combined with any other punishment, but not sentence which would not otherwise be liable to appeal shall be appealable merely on

the ground that the person convicted is ordered to find security to keep the peace.

Explanation. A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishment are combined within the meaning of this section.

415-A. Special right of appeal in certain cases. Notwithstanding anything contained in this Chapter, when more person than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any such person, all or any of the persons convicted at such trial shall have a right of appeal.

416. [Saving of sentence on European British subjects]. Rep. by the Criminal Law Amendment Act, 1923 (XII of 1923) S. 25.

[417. Appeal in case of acquittal. (1) Subject to the provision of sub-section (4), the Provincial 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) 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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(2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.'

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal

shall be entertained by the High Court after the expiry of sixty days from the date of that order.

(4) If, in any case, the application under sub-section (2) 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).

418. Appeal on what matters admissible. (1) An appeal may lie on a matter of fact as well as matter of law [....].

(2) [....]

Explanation. The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

419. Petition of appeal. 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 [....].

420. 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 incharge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

421. Summary dismissal of appeal. (1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall pursue the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader

has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case but shall not be bound to do so.

422. Notice of appeal. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Provincial Government may appoint in

this behalf, of the time and place on which such appeal will be heard, and shall on the application of such

officer, furnish him with a copy of the grounds of appeal. and, in cases of appeals under section 411 A, sub-section (2) or section 417 the Appellate Court shall cause a like notice to be given to the accused.

423. Powers of Appellate Court in disposing of appeal. (1) The Appellate Court shall then send for the record of the case, if such record is not already in 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 411 A, sub-section (2) or section 417, the accused, if he appears, the 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 retried or [sent for trial to the Court of Session or the High Court], as the case may be

or find him guilty and pass sentence on him according to law;

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(b) in an appeal from a conviction, (1) 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 sent for trial, or (2), alter the finding, maintaining the sentence, or, with or without altering the finding reduce the sentence, or, (3) with or without such reduction and with or without altering the finding,

alter the nature of the sentence but, subject to the provisions of the section 106, sub-section (3) not so as to

enhance the same;

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

(d) make any amendment or any consequential or incidental order that may be just or proper.

(2) [Omitted by Law Reforms Ordinance, 1972 Item 147 Cr. P.O.]

424. Judgment of subordinate Appellate Courts. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply so far as may be practicable, to the

judgment of any Appellate Court other than a High Court;

Provided that unless the Appellate Court otherwise directs, the accused shall not be brought up, or required

to attend, to hear judgment delivered.

425. Order by 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 order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than District Magistrate, the certificate 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.

426. Suspension of sentence pending 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-A) An Appellate Court shall, unless for reasons to be recorded in writing if otherwise directs, order a convicted person to be released on bail who has been sentenced.

(a) to imprisonment for a period not exceeding three years and whose appeal has not been decided within a

period of six months of his conviction;

(b) to imprisonment for a period exceeding three years but not exceeding seven years and whose appeal has

not been decided with a period of one year of his conviction;

(c) to imprisonment for life or imprisonment exceeding seven years and whose appeal has not been decided

within a period of two years of his conviction].

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

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(2-A) [Subject to the provisions of section 382-A] when any person other than a person accused of a nonbailable 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, subsection (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.

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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.]

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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.