**Criminal Procedure Code, 1898**
**[V of 1898]**

**Section 342—**
Appellant’s attention having been not drawn to the confessional statement, the confessional statement cannot be used against him.
While examining this appellant under section 342 of the Code the trial Court has also not drawn the attention of appellant to the confessional statement made by him. In such circumstances also the confessional statement cannot be used against the appellant. The trial Court also should not state anything regarding any incriminating evidence against the appellant under section 342 CrPC.
***Angur Vs.State 41 DLR 66.***

**Section 342—**
There being nothing on record to show that the main aspects of the confessional statement of the accused was brought to his notice he was certainly prejudiced and as such the statement could not be used against him.
***Kabir and others Vs. State 45 DLR 755.***

**Section 342—**
The accused appellant was asked questions during statement under section 342 CrPC with the preconceived notion that he was already found guilty under sections 395/397 of the Penal Code. This type of questions being against all norms of procedure of criminal jurisprudence are highly prejudicial to the accused.
***Abu Taleb Vs. State 41 DLR 239.***

**Section 342—**
No question relating to bloodstained cloth or injury in the hand was put to the condemned—prisoner. This circumstance has no basis to base conviction.
It is surprising that though some of the PWs alleged to have seen the said bloodstained shirt, no attempt was made even by the police to seize the same and also to examine the said blood by any chemical examiner. Further, in the examination under section 342 CrPC no question relating to such blood—stained cloth or injury in the hand was put to the condemned— prisoner. So, this circumstance has no basis and the same has not been established at all by any reliable evidence.
***State Vs. Badsha Mollah 41 DLR 11.***

**Section 342—**
 Provisions of section 342 having not been followed strictly, Ext. 5, the confessional statement, was wrongly relied upon.
Since the officer who conducted the test identification parade was not examined by the prosecution, the test identification report is not admissible in evidence.
So far as accused appellant Amir Hossain is concerned since his confessional statement has not been mentioned in his examination under section 342 of the Code of Criminal Procedure he cannot be convicted relying upon his confessional statement.
Since the prosecution can neither rely upon his confessional statement nor take advantage of the evidence of identifying witnesses there is no other legal evidence against accused Amir Hossain to sustain his conviction under sections 395/397 of the Penal Code.
***Amir Hossain Vs. State 41 DLR 32.***

**Section 342—**
A statement of the accused under section 342 CrPC is meant for giving him an opportunity to explain the circumstances appearing against him in the evidence adduced by the prosecution—This is entirely for the benefit of the accused and the accused only—This statement cannot be used by the Court against him, nor is the prosecution permitted to use it to fill up any gap left in the prosecution evidence. Relied on (1923) ILR Lah 50.
***Shah Alam Vs. State 42 DLR (AD) 31.***

**Section 342—**
One of important items for linking up the accused with the crime, namely the sandal, was not at all put to the accused as a circumstance appearing in the case against him while he was examined under section 342 CrPC.
***Mirazul Islam Vs. State 41 DLR (AD)157.***

**Section 342—**
The trial Court failed to take into consideration along with evidence on record the accused’s written reply giving vivid description of the highhandedness of BDR personnel in support of their defence that they were implicated in the case at the instance of their rival businesses men.
***Subodh Ranjan Vs. State 45 DLR 521.***

**Section 342—**
Prsence at the place and time of murder—reasonable doubt as to guilt—In his examination under section 342 CrPC, though all the evidence against him were brought to his notice to prove the charge of murder, accused Kashem did not explain away his presence with co—accused Abbas at the place and time of the murder to raise doubt in the mind of the Court about his guilt, not to speak of raising any reasonable doubt.
***Abul Kashem Vs. State 42 DLR 378.***

**Section 342—**
Allegation of torture made in statement recorded under section 342 CrPC—No reliance can be placed on the belated allegation of torture by police in obtaining confession in the absence of materials on record to substantiate the same.
***Hazrat Ali & Abdur Rahman Vs. State 42 DLR 177.***

**Section 342—**
Conviction of co—accused who has not confessed—Circumstances show the accused Shahjahan Manik had Intimacy with accused Rina and this put them on visiting terms and the visits had strengthened his intimacy with Rina. Their guilty conscience is also evident from the false plea in their statements made under section 342 CrPC that not know each other.
***Shahjahan Manik State 42 DLR 465.***

**Section 342—**
The provision of this section is meant for giving the accused an opportunity to explain the circumstances appearing against him. There is no merit in the contention that the appellate Court acted illegally in relying on his statement under section 342.
***Abdul Karim Vs. Shamsul Alam 45 DLR 578.***

**Section 342—**
Omission to examine the accused under this section is not curable under section 537. After the prosecution closes its evidence the court shall examine the accused and ask them whether they will adduce any evidence in defence. Omission to do so vitiates the conviction if such omission has prejudiced the accused in their defence. The conviction is set aside and it is directed that the accused be examined under section 342 CrPC by the trial Court and thereupon the case be disposed of according to law.
***A. Gafur Vs. Jogesh Chandra Roy 43 DLR (AD) 62.***

**Sections 342 & 537—**
Omission of charge as to common intention—Non—mentioning of section 34, Penal Code during his examination under section 342 CrPC has not in any manner prejudiced the accused in their defence. It is a mere irregularity which is curable and there has been no failure of justice for such non—mentioning.
***Abul Kashem Vs. State 42 DLR 378.***

**Section 344—**
Stay of proceeding—In the facts of the case as in point of time the civil suit was instituted before the filing of the FIR and the questioned documents in their originals are yet to be produced and examined by the civil Court. The criminal proceeding, where the documents are claimed as forged, may, in the interest of justice, be stayed till the disposal of the civil suit.
***Zakir Hossain and others Vs. State 43 DLR (AD) 102.***

**Section 344—**
Refusal of prayer for ad-interim stay while issuing Rule in criminal revision—When appellant clearly stated before the High Court Division while obtaining the Rule that she gave birth to a child just five months ago and it would be injurious to her health as also to the baby if both were to be placed under any type of custody at that critical stage it was not a judicious and sound exercise of discretion to refuse the said stay.
***Azima Begum Vs. Yusif Khan 43 DLR (AD) 53.***

**Section 344—**
Prayer for stay of judgment in criminal case on the ground of pendency of civil suit—Section 344 CrPC authorizes the Court to adjourn a trial. That a judgment in a criminal court is pronounced “after the termination of the ia1” is provided in section 366 CrPC. Therefore, the prayer for stay of delivery of judgment under section 344 was misconceived.
***Hussain Mohammad Ershad Vs. State 44 DLR (AD) 145.***

**Section 344—**
Power to postpone proceedings—Applicability of such power to postpone judgment in a criminal case pending disposal of a civil suit—The application under section 344 CrPC had been moved at a belated stage after the evidence was closed and the trial came to an end. Only because the judgment remains to be delivered, the application does not appear to be one as contemplated under section 344. In fact the petitioner knew of this and prayed for adjournment of the judgment, not of the triaL The application at this stage does not appear to be maintainable.
***Hussain Mohammad Ershad Vs. State 44 DLR 116.***

**Section 344—**
Stay of criminal proceedings—Remand—A case and counter case over the self—same occurrence are to be tried by the same Court one after another. The judgment in both the cases is to be pronounced on the same date by the same Magistrate so that there is no conflicting decision and the parties are not prejudiced. The impugned judgment and onler is set aside and the case remanded back to the Magistrate with direction to try CR Case No. 155 of 1989 and CR case No. 152 of 1989by the same Magistrate giving opportunity to the parties to adduce their evidence and keeping the evidence already recorded in Cr Case No. 155 of 1989 intact.
***Sharif Vs. Md. Obaidur Rahman 43 DLR 66.***

**Section 367—**
There has not been any miscarriage of justice caused by non compliance with the provisions of section 367 CrPC while acquitting the accused persons by — the Magistrate though his judgment was not in proper form.
***Nurul Huda Vs. Bhashanu Sardar 40 DLR (AD) 256.***

**Section 367—**
Judgment—Writing of a proper judgment—If the trial Court’s judgment is such that it cannot be termed as a judgment as per requirement of this section, then an order of writing a proper judgment may be necessary—When the entire matter is open to the criminal Appellate Court which is— required by law to assess the evidence. Independently and come to its finding, then merely because there has been some omission made by the Trial Court in not considering & piece or pieces of evidence, would hardly offer a valid ground for sending the case on remand for a proper judgment.
***Md. Moslehuddin Vs. State 42 DLR (AD) 160.***

**Section 367—**
Remand—As a general rule an order for retrial would be proper if the trial in the lower Court was vitiated by illegality or irregularity or for, other reason.
***Md. Moslehuddin Vs. State 42 DLR (AD) 142.***

Section 367 as amended by the Law Reforms Ordinance (XLIX of 1978), Section 2 and Schedule thereto read with the Penal Code (XLV of 1860), Section 302.
Substitution of sub-section (5) of section 367 CrPC by the Law Reforms Ordinance— Effect of change on sentencing—Previously death sentence was the normal sentence for murder and the court was required to give reasons if the lesser sentence of life imprisonment was given—After the sub—situation now reasons have to be given in either case —A death sentence is to be justified in as much in the same way as in the case of lesser sentence of life term imprisonment.
***Abed Ali Vs State DLR (AD) 171.***

**Section 367(1)—**
Mere stating by the , Court that the appeal is dismissed on merit and  the order of conviction and sentence  is confirmed without considering the evidence on record and the cases of the parties cannot be said to be a judgment on merit.
***Abul Basher Vs sate 40 DLR 248.***

**Section367 (1)—**
Section 367(1) relates to Criminal Court of original jurisdiction but the same has been made to apply to the Appellate the High Court Division by reasons of section 424 CrPC.
***Abul Basher Vs. State 40 DLR 248.***

**Section 369—**
Review—Application praying for review of judgment passed .in a criminal case is totally contrary to the provisions of section 369.
***Samad Ahmed Vs. State 45 DLR 394.***

**Section 374—**
Commutation of sentence— extenuating circumstances for commutation —condemned prisoners are under peril of death. Sentence for almost 3 years suffering agony and torments and thereby partially purged their guilt. Their life may be spared. Sentence of death commuted to one of imprisonment for life.
***Abul Kashem Vs. State 42 DLR 378.***

**Section 374—**
Accused Rina is a young woman aged 24 with an infant and she confessed expressing repentance. Both the convicts suffered pangs of death sentence for about 3 1/2 years. There are extenuating circumstances for sparing them from the extreme punishment, of death.
***Shahjahan Manik Vs. State 42 DLR 465.***

**Section 374—**
Commutation——Delay by itself is no extenuating circumstance for commuting the sentence. There must be other circumstances of a compelling nature which together with delay will, merit commutation.
***Abdul Khair Vs. State 44 DLR (AD) 225.***

**Section 374—**
Commutation of sentence— In the instant case there is an immediate voluntary confession. The accused could have taken a plea of innocence but being repentant he made rather an open breast of everything and may be asking for mercy of God. This aspect .of his character needs be kept in view and then the delay in hearing this reference had not been done by him but he had suffered the agony all these 6 years.
***Abdur Rahman Syed Vs. State 44 DLR 556.***

**Section 376—**
Sentence—Commutation of death sentence—Delay of about two years or so in the disposal of the Death Reference cases and the Jail Appeal in the High Court Division, cannot by itself be a ground for awarding lesser sentence.
***Abed Ali Vs. State 42 DLR (AD) 171.***

**Section 376—**
There is nothing or record to show that there was (any real) love between the appellant and deceased Dilara. The appellant being not a jilted lover, it is difficult to commute the sentence of death to one of imprisonment for life.
Further soon before the occurrence there was no provocation from the prosecution side and there was no occasion for the appellant to show any emotional imbalance and disequilibrium. On the contrary, the evidence on record shows that the appellant with a premeditated and pre—planned manner entered into the hut of the deceased with a dagger and killed her. The trial Court as also the High Court Division found no mitigating circumstances. Nor did we.
***Abdul Quddus Vs. State 43 DLR (AD) 234.***

**Section 376—**
Death sentence, commutatation of—Death sentence not executed after more than four years from the date of confirmation of the sentence Appellant suffered a prolonged agony for laches of others. Death sentence commuted to one of life imprisonment.
***Wajear Rahman Moral Vs. State 43 DLR (AD) 25.***

**Section 401—**
Empowers the Government to remit and suspend a sentence passed by a Court but for such remission and suspension of sentence the order of conviction is, not reversed. It remains in force, but the convict due to an order of remission and suspension passed under section 401 CrPC is not to serve out the period of sentence so suspended and is not to pay the fine so remitted.
***Nasiruddin Miah Vs. State 40 DLR 244.***

**Sections 401 and 423—**
In case of an appeal from an order of acquittal, the Court may refuse the prayer of withdrawal of the appeal as it may find on hearing the appeal on merit that the order appealed is illegal and calls for an order of conviction.
***Nasiruddjn Miah Vs. State 40 DLR 244.***

**Section 403—**
Double Jeopardy—The accused is going to be prosecuted in respect of an offence which did not occur during the earlier transaction nor the present case arose out of the same fact and for the present o1fence he was not tried previously. In such a position the doctrine of autrefois acquits and autrefois convict or of the Code as to double jeopardy is not applicable in the present case.
***HM Ershad Vs. State 45 DLR 534.***

**Section 403(2)—**
Trial of an accused for one distinct offence will not stand in the way of his subsequent trial for the other distinct offence as specifically provided by sub-section (2) of section 403. The former trial for unauthorised possession of the firearms will not be a bar to the subsequent trial for the offence of robbery, even if the same firearms have been used while committing the robbery. The trial of the petitioners in this case is perfectly lawful.
***Arfan Ali Vs. State 42 DLR (AD) 22.***

**Section 408—**
Appeal will lie to the Court of Sessions if the Assistant Sessions Judge deemed to be an Additional Sessions Judge passes a sentence of imprisonment for a term of five years or less. Section 408 has full force and application.
***Nurul Huda Vs. Baharuddin 41 DLR 395.***

**Section 409—**
An Assistant Sessions Judge deemed to be appointed as Additional Sessions judge has the limited power of passing higher sentences except a Death Sentence in those sessions cases which are now triable by him by deeming and treating him to be an Additional Sessions Judge, consequent upon changes brought. He shall not be deemed be an Additional Sessions Judge for all the under the Code, eg for hearing appeals revisions, references and reviews if they are  made over or transferred to him by the Judge. Under section 409 the session Judge can transfer the hearing of an appeal only to an Additional Sessions Judge and to  an Assistant Sessions Judge deemed been appointed as an Additional session Judge. The dismissal in the instant appeal by the Assistant Sessions Judge and refusal of interference by the High Court division are therefore illegal. The appeal against conviction is therefore allowed and it is directed that the Sessions Judge may himself dispose of the appeal or transfer it to an Additional Sessions Judge for disposal.
***Abdul Kasham Vs. State 43 DLR (AD) 77.***

**Sections 409, 410, 435, 436, 438 and 439A—**
Under section 409 the Sessions Judge can transfer the hearing of an appeal only to an Additional Sessions Judge and not to an Assistant Sessions Judge. Section 410 has also full force and any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge may appeal to the High Court Division. This section has no reference to an Assistant Sessions Judge deemed to have been appointed as an Additional Sessions Judge. The same applies to sections 435, 436, 438 and 439A.
***Nurul Huda Vs. Baharuddin 41 DLR 395.***

**Section 410—**
The High Court Division sitting in appeal was bound to give due weight to the opinion of the trial Court with regard to the credibility and demeanour of the witnesses.
***State Vs. Abdus Sattar 43 DLR (AD) 44.***

**Sections 410—423 read with—Employment of Labour (Standing Orders) Act (VIII of 1965)—Section 26.**
Order of sentence passed by the Labour Court under the provisions of Employment of Labour (Standing Orders) Act is not appealable to the appellate authority under the Code of Criminal Procedure as there is no provision for such appeal under the Employment of Labour (Standing Orders) Act.
***Jagodish Chandra Dutta Vs. MH Azad 41 DLR 257.***

**Section 417—**
Review of evidence—The reason given by the Judges of the High Court Division to disregard the evidence of PWs 2, 3 & 4 relying only upon the evidence of PW 7 is rather artificial. In an appeal by the State against acquittal it is quite open to the Court to review the evidence in order to see whether finding on which acquittal is based is perverse being in wanton disregard of good and unblemished evidence given by other witnesses.
***State Vs. Ashraf Ali 43 DLR (AD) 83.***

**Section 417, 418 and 423—**
Provisions under these sections give to the High Court Division full power to review the evidence upon which the order of acquittal was founded—No limitation should be placed upon that power.
***Shah Alam Vs. State 42 DLR (AD) 31.***

**Section 417 and 439(4)(5)—**
Petitioner acquitted of the charge of dacoity by the trial Judge—Government had not preferred any appeal under section 417 CrPC—Section 439 CrPC does not authorise High Court Division to convert a finding of acquittal into one of conviction. Held—the Rule issued suo motu by the High Court Division was without jurisdiction.
***Jalal Uddin Vs. Mrs. Bilkis Rahman& State 42 DLR 107.***

**Section 417A—**
Appeal by informatnt— Competency—The contention that an appeal at the instance of an informant from an inadequate sentence lies under section 417A has no substance.
***Abdul Aziz Vs. State 44 DLR 594.***

**Section 417A—**
That all judgment, whether conviction or acquittal are appealable under section 30(1) Gf the Special Powers Act.Under sub-section (1) Of section 27, criminal cases coming within the ambit of the Special Powers Act can only be initiated on a report in writing made by a police officer not below the rank of Sub—Inspector So no private party has any right to initiate such cases. Section 30 seems to cover appeals by a State. Therefore this appeal is not maintainable under section 417(1) of CrPC.
***State Vs. Wanur Rahman 40 DLR 346.***

**Section 417(1) (a)—**
Maintainability of appeal by witness against order of acquittal— The State under section 417(1)(a) of the Code is authorised to present an appeal against an order of acquittal passed by the Court of Sessions. But in the present case, the appeal was not preferred by the State. The appeal was filed before the High Court Division by a witness who is also the petitioner in the present petition for leave to appeal. Hence this leave petition is not maintainable in law.
***Fazar Ali alias Manik Chand Vs. Fazar Ali and others 43 DLR (AD) 129.***

**Section 423(1) (a) (b)—**
A finding of acquittal can be converted into one of conviction only under clause (a) of sub-section (1) of section 423 CrPC. The suo motu Rule is without jurisdiction.
***Jalaluddin Vs. Mrs. Bilkis Rahman and State 42 DLR 107.***

**Section 423(1) (b)(2)—**
Acquittal converted into conviction under section 423 CrPC—No interference in the absence of appeal against acquittal.
***Mofizuddin Vs. State 40 DLR (AD) 286***

**Section 423(1)(b)(2)—**
The Appellate Court has jurisdiction under section 423(1)(b) (2) of Code of the Criminal Procedure to reverse an order of acquittal purporting to ‘alter the finding” of conviction.
***Mofizuddin Vs. State 40 DLR (AD) 286.***

**Section 426—**
Bail after conviction—The accused could obtain bail from the Appellate Court or from the High Court Division and not from the trial Court which became functus officio after the filing and disposal of appeal against conviction.
***Dulal Vs. State 43 DLR 321.***

**Section 426—**
Bail—Suspension of sentence pending appeal—Release of appellants on bail—Sentence being in excess of one year Sessions Judge was not competent to grant such bail.
***Saidur Rahman Vs. State 40 DLR (AD) 281.***

**Section 426—**
Bail—Condition for the bail is quite reasonable and can be complied with by the person seeking bail without any difficulty but payment of fine involving huge amount of money as a condition for bail may not be possible—Impugned order of payment of fine as a condition for the bail is not supportable either in law or on the principle of reasonableness.
***Iqbal Vs. State 41 DLR (AD) 111***

**Section 428—**
Additional evidence— Section 428 may be resorted to when such evidence either was not available at the trial or the party concerned was prevented from producing it, either by circumstances beyond its control or by reason of misunderstanding or mistake.
***Rajab Ali Zulfiqar Vs. State 45 DLR 705.***

**Sections 432, 424 and 367(1)—**
It is well— settled principle of law that for disposal of Criminal Appeal presence of an Advocate is not essential and the Appellate Court can dispose of the appeal on mere writing a judgment according to provisions of section 667(I) of CrPC.
***Abdul Basher and others Vs. State 40 DLR 248.***

**Section 435—**
Right of heirs of deceased complainant to proceed with the complainant’s case—The complainant in the criminal case under section 447 claimed ownership and possession of the land in question. On his death during the pendency of the revision case arising out of the matter his wife having stepped into his shoes so far as it relates to his properties, she is required to be brought on record to protect her interest in the land.
***Dr. Md. Abdul Baten Vs. State 43 DLR 60.***

**Sections 435 and 436—**
Sessions Judge called for records of the case triable under the provisions of the Special Powers Act from the Court of the Magistrate in exercise of his power under sections 435 and 436 CrPC and took cognizance of the offence after converting himself into a Special Tribunal—this is not contemplated by law.
***Satya Ranjan Sarda Vs. State 42 DLR 142.***

**Sections 435 and 439—**
Interpretation of Statute—The expression “if the accused is in confinement” in section 439 CrPC is used as a condition precedent to bail.
***Abdus Samad Vs. State 41 DLR 291.***

**Sections 435 & 439—**
Revisional Power, scope of—Question whether the law laid down in section 5(l)(e) of the Act, 1947 and section 4 of the Anti—Corruption Act, 1957 is discriminatory and violative of the provisions of the Constitution is not within the scope of the present Rule to be determined.
***HM Ershad Vs. State 45 DLR 533.***

**Sections 435 and 439—**
To be released on bail a person must be in custody or in. some sort of confinement.
***Abdus Samad Vs. State 41 DLR 291.***

**Sections 435, 439 & 561A—**
Power under sections 439 and 561A is different in nature—Section 439 read with section 435 refers to inferior Court under High Court Division—Exercise of power under section 561A is not limited to the inferior Court only.
***Jagodish Chandra Dutta Vs. MH Azad 41 DLR 257.***

**Section 436—**
Sessions Judge’s power to order enquiry—The Sessions Judge commits no illegality in setting aside the order of discharge of the accused passed by the Magistrate and in directing the latter to send the case record to the Court of the Sessions Judge along with statements recorded by the police. The order is within the scope of section 436 CrPC. But the Sessions Judge’s further order giving direction to send the accused for trial being in excess of his jurisdiction cannot be sustained. The Magistrate is left with his absolute discretion in the matter of taking cognizance of the offence and sending the accused—petitioners to the Court of Sessions for trial after holding further enquiry according to law.
***Motaleb Vs. State 43 DLR 519.***

**Section 436—**
Sessions Judge’s power to order inquiry—The jurisdiction of the Sessions Judge is wide enough to direct further inquiry by a Magistrate. If the Sessions Judge directs to make further inquiry by the Magistrate by holding a judicial inquiry it is fully within the express power given to the Sessions Judge under section 436 CrPC.
***Farid Ahmed & others Vs. State 44 DLR 30.***

**Section 436—**
The Magistrate seemed to have acted within his jurisdiction to decide; on assessment of evidence on record, whether all or some of the accused are to be sent fr trial. The order of the Sessions Judge having the effect of directing the Magistrate to take cognizance of the 8 accused against whom the latter found no prima facie case is not within the scope of further inquiry contemplated under section 436 CrPC.
***Mohibar Rahman Vs. Kuti Miah 44 DLR 112.***

**Section 436—**
Sessions Judge re—assessed the evidence recorded by the Magistrate under section 202(2A) of the CrPC and apparently took cognizance of the case himself against the petitioners directing further enquiry into the matter by way of securing their attendance and ordering them to be sent up under section 205 CrPC before his court to stand trial.
Held—Order of the learned Sessions Judge is not contemplated in section 436 of the Code of Criminal Procedure and as such he acted illegally in interfering with the order of the learned Magistrate as such.
***Syed Ahmed Vs. Habibur Rahman 42 DLR 240.***

**Sections 436, 439 and 439A—**
Sessions Judge’s power to direct further enquiry under section 436 CrPC . on dismissal of complaint on an erroneous view of law.
***Bangladesh Vs. Yakub Sardar 40 DLR (AD) 246.***

**Sections 437 & 439—**
Right of heirs of ceased complainant to proceed with the complainant’s case—The complainant in the criminal case under section 447 claimed ownership and possession of the land in question. On his death during the pendency of e revision case arising out of the matter his wife having stepped into his shoes so far as it relates to his properties, she is required to be brought on record to protect her interest in the Iand.
***Dr. Md. Abdul Baten Vs. State 43 DLR 60***

**Section 439—**
The jurisdiction of a Single to hear a revisional application against an order of acquittal passed in a case involving offence punishable with sentence of imprisonment exceeding one year is barred.
***Ahsan Sarfun Nur Vs. Nurul Islam 42 DLR (AD) 90.***

**Section 439—**
Refusal of prayer for ad—interim stay while issuing Rule in criminal revision. When appellant clearly stated before High Court Division while obtaining the rule that she gave birth to a child just five ago and it would be injurious to her health as also to the baby if both were to be placed under any type of custody at that critical stage it was not a judicious and sound exercise of discretion to refuse the said stay.
***Azima Vs. Yusuf Khan 43 DLR (AD) 53.***

**Section 439—**
Revision against order of acquittal When the appellate Court and the High Court Division upon evidence and circumstances which is not unreasonable or Perverse refused to believe the prosecution case, this court merely because a different view is possible of the evidence does not interfere with an order of acquittal.
***Abdul Hamid Mollah Vs. Ali Mollah 44 DLR (AD) 223.***

**Section 439—**
Leave order was granted to examine the powers under section 439 CrPC as interpreted by the High Court Division.
***Kashem Ali Vs. State 40 DLR (AD) 294.***

**Section 439—**
High Court Division made three propositions in defining the area for exercise of its power and authority.
***Kashem Ali Vs. State 40 DLR (AD) 294.***

**Section 439—**
Administration of Criminal Justice with the change of time and circumstances attending the same—High Couit Division to be a little more scrutinizing even in a case of acquittal—whether misappreciation of evidence is never a sufficient ground for interfering with an acquittal.
***Kashem Ali Vs. State 40 DLR (AD) 294.***

**Section 439—**
Direction for filing a separate, application. for bail while moving a revisional application whether proper—When the appellants were already on bail granted by the lower Appellate Court, the direction that has been given after rejecting the prayer for bail is not proper and is not in keeping With the normal practice and procedure that is traditionally followed in the High Court Division in revision. In that view of the matter, the appellants will remain on bail already granted, till, disposal of the revision case.
***Baneazuddin Ahmed Vs. State 43 DLR (AD) 120.***

**Section 439—**
Application for condonation of delay in filing an appeal under the Special Powers Act is not maintainable. And such an appeal when time—barred cannot be treated as a revisional application under CrPC.
***Shamsul Haque Vs. State 43 DLR 247.***

**Section 439—**
The remand order amounts to a double jeopardy for the petitioners and offers a chance to the prosecution to remedy its lacuna. Such a remand should not be made.
***Fazal Vs. State 43 DLR 40.***

Section 439 read with Employment of Labour (Standing Orders) Act (VIII of 1965)— Section 26—High Court Division in exercise of its power under section 439 CrPC has no jurisdiction to review any order of the Labour Court passed under section 26 of the Employment of Labour (Standing Orders) Act.
The application on which the instant Rule was issued and was filed under section 439 of the Code of Criminal Procedure. We, therefore, find that this Court has no jurisdiction to review any order of the Labour Court passed under section 26 of the Employment of Labour (Standing Orders) Act, 1965.
***Jagodish Chandra Dutta Vs. MH Azad 41 DLR 257.***

**Sections 439 & 439A—**
Revisional power of the High Court Division—It is true that the party in a revision case under section 439A is debarred from agitating his point before the High Court Division under section 439 of the Code, but the power has not been restricted by any clause of section 439 or by any law if it is considered necessary to prevent the abuse of the process of the Court. The order of the Sessions Judge being not in accordance with law requires interference and the aid of section 561A of the Code can be appropriately invoked there being no scope for a second revision.
***Dr. Md. Abdul Baten Vs. State 43 DLR 60.***

**Sections 439, 439A & 561A—**
Propriety of exercising jurisdiction under section 561A CrPC to quash Magistrate’s order drawl proceeding under section 145 CrPC —as the High Court Divisions revisional jurisdiction is concurrent with that of the Session and although the High Court Division could decline to interfere for not moving the Sessions Judge, the interference that has been made cannot be said to be without jurisdiction. Jurisdiction under section 561 A CrPC is not ousted in the presence of the revisional jurisdiction of the Sessions Judge under section 439A of the Code. The only question will be, has any case been made out either under section 439 or 561A of the code? The answer will vary case to case.
***Samirun Nessa Vs. Kamaluddin 43 DLR (AD) 175.***

**Sections 439A & 561A—**
Inherent jurisdiction whether available to one losing in revision—The inherent jurisdiction of the High Court Division will be available even to a party who has lost in revision before the Sessions Judge. But it must be clearly borne in mind that the powers under section 561A being extraordinary in nature, should be exercised sparingly and where such exercise essential and justified by the tests specially laid down in the provision itself.
***Aminul Islam Vs Mujibur Rahman 45 DLR (AD) 9.***

**Sections 439A & 561A—**
Revision jurisdiction of the High Court Division— Revision in a case arising out, of section 145 CrPC. A party who has been unsuccessful in revision under section 439A CrPC is not totally debarred from invoking the jurisdiction of the High Court Division under section 56lA. The opening words of this latter section—”Nothing in this Code shall be deemed to limit or affect the inherent power of 1t High Court Division” repels any contention of such debarment.
***Aminul Islam Vs. Mujibur Rahman 44 DLR (AD) 56.***

**Sections 439(4) and 439A(2)—**
No Second revision lies in view of the law in Sections 439(4) & 439(A)(2) of the CrPC. The purported distinction sought to be drawn by the learned Judge of the High Court Division was misconceived and the obiter was unwarranted.
***Haji Golam Hossain Vs. Abdur Rlahman Munshi. 40 DLR (AD) 196.***

**Sections 439(4) & 561A—**
Under section 561A the exercise of inherent power is not restricted by any clause like section 439—The court can exercise this power.
So we think it proper to exercise the inherent power under section 561A the exercise of which is not restricted by any clause like section 439. In section 439 of the Code there is a bar, as sub-section (4) of the section provides to the effect that in an appealable case the party who has right to appeal cannot invoke section 439. But there is no such restriction in section 561A.
***Khalilur Rhaman Vs. State 41 DLR 385.***

**Sections 467 and 471—**
Complaint not having been made by a competent court, the criminal proceeding under sections 467 and 471 of the Penal Code has to be quashed.
***Sona mia and others Vs. State 42 DLR 8.***

**Section 476—**
Rule issued by the High Court Division on the appellants and two advocates to show cause why complaint should not be lodged against them under section 476 CrPC was made absolute against the appellants who then appealed.
High Court Division issued a suo motu Rule in Criminal Revision No. 43 of 1986, upon the appellants and two Advocates to show cause as to why a complaint should not be lodged against them under section 476 of the Code of Criminal Procedure as they appeared to have practised fraud upon the Court by filing a false petition of compromise. The Rule against the appellants was made absolute, but it was discharged against the two Advocates. Hence this appeal.
***Abdul Gafur Vs. State 41 DLR (AD) 127.***

**Sections 480 and 482—**
The Tribunal shall have the same powers as vested in a Civil Court for the purpose of inquiry and every enquiry as such shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 of the Penal Code—A Tribunal shall be deemed to be a Civil Court for the purposes of sections 480 and 482 CrPC.
***Muhammad Raushan Ali Vs. Bangladesh Bar Council 42 DLR 201.***

**Section 488—**
Order of maintenance of wife and son—the purpose of the Family Courts Ordinance is to provide for speedy disposal of family matters by the same forum. There will be anomaly and multiplicity of proceedings if, in spite of the establishment of Family Courts, the Magistrate continues to entertain cases for maintenance. Provisions made in the Family Courts Ordinance have ousted the jurisdiction of the Magistrates to entertain application for maintenance which is a family court matter.
***Md. Abdul Khaleque Vs. Selina Begurn 42 DLR 450.***

**Section 491—**
High Court may pass an order under section 491 CrPC at any time. The phrases “illegally” or “improperly” used in the sub-section (b) of section 491 of the Code mean that when a person is not detained within the provisions of any, law, the detention becomes an illegal detention. The scope of section 491 CrPC is wider than the scope of constitutional provision. (Article 102 of the Constitution)
***Syeda Rezia Be gum Vs. Government of Bangladesh 40 DLR 210.***

**Section 491—**
And Constitution of Bangladesh (as amended upto date) Article 102—Court’s duty to hear the matter and pronounce its decision at the earliest without waiting for Advisory Board’s report regarding the legality or otherwise of the detenu’s detention beyond the scope of the Special Powers Act.
In view of the clear provisions of section 491 CrPC (as well as under Article 102 of the constitution) it is the duty of this Court to hear the matter giving opportunity to both the parties to make their written and oral submissions and pronounce’ its decision as early as possible without waiting for the Advisory Board to report its opinion to the Government regarding the question whether the detenu is being illegally detained beyond the scope of the Special Powers Act, 1974.
***Dr. Md. Habibullah Vs. Secretary, Ministry of Home Affairs 41 DLR 160.***

**Section 491—**
Production of victim girl before the Upazila Court for determination of age and also in the matter of her custody. In the matter of guardianship and custody of the person of a minor the court may put the minor in the custody of an appropriate person for the minor’s welfare or may keep the minor in neutral custody.
***Sukhendra Chandra Das Vs. Secretary, Ministry of Home Affairs 42 DLR 79.***

**Section 491—**
Habeas Corpus—Extension of detention after expiry of initial period of’’ detention—Order dated 22.5.1989 by the’ Ministry of Home Affairs was made after the’’ expiry of 30 days from the date of first order of detention by the Additional District Magistrate. The Government have not been authorised to extend the period of detention ‘with retrospective effect. The detenu is therefore detained under an illegal order of detention and is directed to be released forthwith.
***Momtaz Sultana Vs. Secretary, Ministry o Home Affairs 42 DLR 457.***

**Section 491—**
Determination of age of a — person in custody for the purpose of her guardianship—Isolated statement of her father in such a case in respect of her age cannot be accepted as true unless it is supported by’ corroborative evidence If a girl is found below 16 and taken away without the consent of the guardian then it will be an offence and the guardian will be entitled to her custody. Even if it is presumed that at time of occurrence of her kidnapping the detenu was minor but now when she is found major the Court has no jurisdiction to compel her to go with her father.
***Manindra Kumar Malakar Vs. Ministry of Home Affairs 43 DLR 71.***

**Section 491—**
Directions of the nature of a Habeas Corpus, scope of—The argument that the scope of section 491 CrPC is narrower than that of Article 102 of the Constitution has no force. Its scope is not hedged by constitutional limitation. In constitutional provision it is to be seen whether the. detenu is being held without any lawful authority and in a matter under section 491 it is only required to be seen whether the detention Order is illegal and/or improper.
***Pearu Md. Ferdous Alam Khan for Serajul Alam Khan (Detenu) Vs. State 44 DLR603.***

**Section 491—**
The High Court Division can exercise its jurisdiction not only in declaring detention of the detenu illegal but also the proceedings upon which the i was held in detention to be illegal.
***State Vs. Deputy Commissioner Satkhira, and Ors. 45 DLR 643.***

**Section 491—**
Judicial custody—Dispute over custody of alleged victim girl—Why father is refused to have her custody—A girl has been kept now in judicial custody though she is neither an accused or a witness in the relevant case. The custody or detention of a victim  girl is different from that of a criminalor a political detenu. Judicial custody has the complexion of the custody of a guardian. This custody is necessary for giving the girl a chance to make up her mind and develop her independent opinion free from external influence facts and circumstances of each case will determine as to how and when the inherent discretion of the court for judicial custody is to be exercised.
***Dr. Kazi Mozammel Hoque Vs. State 45 DLR 197.***

**Sections 492 and 493—**
Interpretation of Statute—Public Prosecutor occupies a solemn and unique position in the Code of Criminal Procedure.
***Dr. SM Abu Taher Vs. The State 42 DLR 138.***

**Sections 492 and 493—**
Appointment of Public Prosecutor and authority of the Public Prosecutor to conduct a case before any Court without written authority of the Government.
***Dr. SM Abu Taher Vs. State 42 DLR 138.***

**Section 494—**
Withdrawal from prosecution of any person (before charge is framed or after charge is framed) before pronouncement of the judgment—effect of —Words “consent of the Court” occurring in section 494 CrPC— Interpretation of—Court is to see whether the public prosecutor who has a duty under — section 494 CrPC to file an application for withdrawal from prosecution has in fact placed cogent and relevant materials for consideration of a court of law—The Court granting “consent” must not accord its consent as a matter of course but must apply its mind to the ground taken in the application for withdrawal by the Public Prosecutor.
***Abdul Hakim Chowdhury Vs. Ruhul Amin & State 40 DLR 259.***

**Section 494—**
Consent being one of a Court of law, the Court must consider the ground for its satisfaction for according consent and also for the higher Court to examine the propriety and legality of the order.
***Abdul Hakim Chowdhury Vs. Ruhul Amin & State 40 DLR 259.***

**Section 494—**
Trial Courts passing of the impugned order of withdrawal as a matter of course without any application of judicial mind to any material on record.
***Abdul Hakim Chowdhury Vs. Ruhul Amin 40 DLR 259.***

**Section 494—**
The terms “consent” is a legal term and is of wider import which means “acquiesce in” or “agree to”.
***Abdul Hakim Chowdhury Vs. Ruhul Amin 40 DLR 259.***

**Section 494—**
In a case of revival under section 339D, the Court is not to determine anything judicially—Court not to search for Government instruction which prompted the Public Prosecutor to file application for revival.
***Dr. SM Abu Taher Vs. State 42 DLR 138.***

**Section 497—**
Bail—This section enjoins upon the Court to exercise judicial discretion in the matter of granting bail for ascertaining whether the materials placed before the court by the prosecution are of such a tangible nature that if left unrebutted, they may lead to the inference of guilt of the accused. In the present case there is no other material on record other than the FIR and mere allegations thereof. The court thus committed an error in refusing bail in this case.
***AKM Mosharraf Hossain Vs. State 44 DLR (AD) 246.***

**Sections 497 and 498—**
Bail—A person is not automatically debarred from getting bail merely because his name was mentioned in the charge-sheet.
***Liaqat Sharf Vs. State 40 DLR 506.***

**Section 498—**
Order for conditional bail is illegal and not proper.
***AHM Siddique Vs State 45 DLR (AD) 8.***

**Section 498—**
Considering the statements under section 161 of the Code of Criminal Procedure wherein no specific overt act involving the appellants with the killing of the victim is found the appellants are granted bail and if the trial starts the Sessions Judge will be free to take them into custody during trial.
***Abdul Matin & others Vs. State 44 DLR (AD) 8.***

**Section 498—**
Bail—It is not the prima facie case against the accused but ‘reasonable grounds’ for believing that he has been guilty which prohibits granting of bail. The onus is on the prosecution to disclose those reasonable grounds. Court has to examine the data available in the case to find out whether reasonable grounds exist to connect the accused with the crime alleged.
***Shaikh Shahidul Islam Vs. State 44 DLR (AD) 192.***

**Section 498—**
Bail—Refusal of bail in a case of murder in which the accused was earlier exempted from trial—In view of Sessions Judge’s findings that non— submission of charge sheet against the petitioner earlier was without valid reason, that he is a powerful man in the locality and there is a possibility of his influencing the witnesses has substance—there is no compelling reason to enlarge the petitioner on bail.
***ASM Abdur Rob Vs. State 44 DLR 205.***

**Section 498—**
Sentence for one year—The Court ought to have exercised discretion in granting bail to the appellants in view of the short sentence of imprisonment.
***Saimuddin Vs State 43 DLR (AD) 151***

**Section 498—**
Bail in a case where the sentence is of short duration—In the present case the sentence is of two years and the disposal of the appeal in question normally takes time. In that circumstances the High Court Division ought to have exercised judicial discretion in the matter of granting bail to the appellants. The judicial discretion having not been properly exercised in the facts of the case the order is set aside and the appeal allowed.
***Dhanu Mia Vs. State 43 DLR (AD) 119.***

**Section 498—**
High Court Division in criminal revision cancelled the appellant’s bail when there was no new material before it and no allegation of tampering with the evidence. Co—accused against whom cognizance of a murder case has already been taken is already on bail. High Court Division did not exercise its judicial discretion properly in cancelling the appellant’s bail—Appellants to remain on bail already granted by Upazila Magistrate.
***Bakul Howlader Vs. State 43 DLR (AD) 14.***

**Section 498—**
Bail—Inctidnating facts disclosed in the FIR after due inquiry by the inspecting team are reasonable grounds for believing that the petitioner is guilty of criminal breach of trust. The Sessions Judge has rightly rejected the petition for bail.
***Mustafizur Rahman Vs. State 45 DLR 227.***

**Section 498—**
Bail—When there is hardly chance of abscondance of the appellant in peculiar circumstances, the Court has found that he is entitled to bail—Appeal allowed. We need not consider the appellant’s contentions with regard to the order of conviction. In the peculiar circumstances of the case we think the appellant is entitled to bail particularly where there is hardly any chance of abscondance. The respondent found it difficult to oppose the appellant’s prayer.
***SM Sajahan Ali Tara Vs. State 41 DLR (AD) 112.***

**Section 498—**
Anticipatory bail— Circumstances when such bail was granted by the High Court Division. The police went to the residence of the petitioner to arrest him on the basis of a case started upon a newspaper report. He was a candidate for the National Assembly election. His political rivals and enemies were bent upon defeating him by putting him in confinement through the help of the police. In such circumstances, the prayer for anticipatory bail was granted.
***Zulfiqur Ali Bhutto Vs. State 43 DLR 312.***

**Section 498—**
Bail—there was a free fight between the parties; the accused are in jail for 9 months, the case has not been sent to proper court for trial as yet and both sides have case against each other on the self—same matter— Hence it will not be unreasonable to enlarge the petitioners on bail till the trial starts when the trial Court will see whether they should continue on the same ball.
***Shahidullah Vs. State 42 DLR 394.***

**Section 498—**
Successive bail petition, propriety of—The Judges were not right in taking the view that once a petition for bail is rejected no further application can be made and the remedy lies only in an appeal. It is also not right to say than an application for bail could not be filed before the Vacation Judge and that he had no jurisdiction to grant interim bail (when he was himself a party to the rejection of bail for the same accused earlier by the Division Bench). At the most, it may be said that it was indiscreet on the part of the Vacation Judge to grant bail in the facts of the case.
In the application for bail before the Vacation Bench, it was not mentioned that prayers for bail had been refused earlier. For this suppression of fact alone the ad interim bail could have been cancelled.
***MA Wahab Vs. State 42 DLR (AD) 223.***

**Section 498—**
Bail matter—High Court Division admitted a criminal appeal but rejected the prayer for bail pending disposal of the appeal—Ad interim bail granted by the Appellate Division at leave stage for two months cannot be allowed to continue indefinitely—ad—interim bail extended for six months more and meanwhile parties are directed to make sincere efforts for disposal of the appeals—on expiry of the extended period, prayer for bail is to be moved before the High Court Division.
***Azizul Hoq Vs. State 42 DLR (AD) 284.***

**Section 509A—**
Post-mortem report although excluded from consideration while dealing with the prosecution case due to its having been brought on record without compliance of the provision of section 509A, the defence could very well use and refer to any portion of the report for its own purpose and for assisting the Court in reaching its decision.
***Tariq Habibullah Vs. State 43 DLR 440.***

**Section 509A—**
Post-mortem report—For bringing such report in evidence strict compliance of section 509A of the Code is necessary.
The report of the Post-mortem examination was neither produced by the doctor who had held the Post-mortem examination nor was the doctor examined as a witness in the trial. While producing the report PW 7, an investigating officer, had shown no cause explaining the circumstances under which the doctor could not be produced in court.
***Tariq Habibullah Vs. State 43 DLR 440.***

**Section 509A—**
Post-mortem report—The trial Court committed error of law in considering and relying upon the Post-mortem report when it was produced in court without fulfilling the requirements of section 509A.
***Khelu Mia Vs. State 43 DLR 573.***

**Section 509A—**
Report of Post-mortem examination—As the doctor concerned who held the Post-mortem examination was not examined although he was available in the country at the relevant time, the report was not legally admittex44rto evidence and as such the conviction based thereon is illegal.
***Abdul Quddus Vs. State 44 DLR 441.***

**Section 509A—**
Post-mortem report is admissible evidence when three requirements laid down in the section are satisfied.
***Ezahar Sepai Vs. State 40 DLR 177.***

**Section 509A—**
The Post-mortem report was not a substantive evidence before insertion of section 509A in the Code of Criminal Procedure by Ordinance No. 24 of 1982.
***Ezahar Sepai Vs. State 40 DLR 177.***

**Section 509A—**
Non—examination of the doctor was not fatal for the prosecution case. Conviction can be based on the evidence of a solitary witness if the testimony is not tainted with suspicion.
***Ezahar Sepai Vs. State 40 DLR 177.***

**Section 509A—**
Ext. 13, Post-mortem report of the deceased, has been admitted into evidence in utter violation of the mandatory provisions of section 509A. The doctor who held the Post-mortem on each of the dead bodies was not examined during the trial.
***Md. Ali Haider Vs. The State 40 DLR 97.***

**Section 516A—**
Section 51 6A empowers a criminal court to pass an order for custody and disposal of property dining any enquiry or trail and it does not empower an Investigating officer to give any property in the custody of any person.
***Siddique Ahmed Sowdagar Vs.State 40 DLR 268.***

**Section 516A—**
Where the offence is not committed regarding particular property the Court has no authority to pass order directing Sale of such property and deposit the sale price in courts account.
***Shahabuddin Vs. Abdul Gani Bhuiyan 45 DLR 217***

**Section516A—**
Custody— of property pending trial for theft and cheating— Jurisdiction of civil Court over such property—Order passed by the criminal court giving custody of a vessel, the subject—matter of the criminal case, to the local Upazila Chairman was subject to revision and the application under section 151 CPC made before the civil Court by the complainant  as the plaintiff in his suit for injunction is misconceived.
***Mitali Shipping Lines Vs Bhuiyan Navigation Agency 44 DLR 230.***

**Section 517—**
Disposal of seized goods— It is for the trial Court to consider all the relevant facts and hear all the necessary parties before making an order for disposal of goods under section 517 CrPC, if called upon.
***Sompong Vs. State 45 DLR (AD) 110.***

**Sections 517, 520 and 561A—**
Stolen necklace—Whether the possession of the same should be restored to the petitioner who was acquitted bf charge of retention of stolen property due to incomplete evidence and also upon benefit of doubt—Stolen necklace cannot be restored to the petitioner under such circumstances.
***Hajera Khatoon Vs. State 40 DLR 280.***

**Section 517(1)—**
The Court has a very wide discretion as to the mode of disposal of the property produced before it or in its custody.
***Sree Monaranjan Das. Vs. State 40 DLR 485.***

**Section 522—**
Power to restore possession of immovable property—Provision of section 522 of the Code cannot be made applicable to the accused persons by filing a separate application to the trial Court after disposal of the appeal and revisional application arising out of the case against him under section 447 Penal Code.
***Dr. Md. Abdul Baten Vs. State 43 DLR6O.***

**Section 522—**
Restoration of possession of immovable property—The order of the Court restoring possession must be passed within one month from the date of conviction. The Magistrate having passed the order of restoration beyond 30 days of the order of conviction acted without jurisdiction. The provision of section 522 cannot be availed of if the dispossession is not by means of criminal force or show of force or criminal intimidation. In the instant case the accused petitioner wrongfully entered into the shop at 10—30 PM but at that time the complainant opposite party or his wife, who was the tenant, was not upon the scene. There was neither assault nor any resistance or use of jrina1 forte in the act of dispossession by the accused petitioner. The Magistrate’s order is bad on this count also.
***Sheikh MA Jabbar Vs. AKM Obaidul Hug 43 DLR 233.***

**Section 523(1)—**
The act of the Investigating Officer to give custody of the property on the basis of the practice in vogue in the Police Department without any support of the statutory provisions of law to that effect in violation of section 523 CrPC is without any lawful authority and is illegal.
***Siddique Ahmed Sawdagar Vs. State 40 DLR 268.***

**Section 526—**
Transfer of case—Plea of bias—The question of admissibility or non—admissibility of evidence should be left to be agitated when the case is argued. Merely because a Court acted illegally in allowing some evidence to go into the record or disallowing some evidence as irrelevant or took a wrong view of the law in passing an order would not by itself be a ground for bias. (Per Anwarul Huq Chowdhury)
Per Habibur Rahman Khan J (agreeing):In the present case the order refusing to grant adjournment having been passed by the Special Tribunal not in violation any mandatory provisions of law but in exercise Of his discretionary power, could not itself give rise to a ground for transfer as no prejudice could be shown to have been caused to the accused.
***Hussain Mohammad Ershad Vs. State 43 DLR 347.***

**Section 526B—**
Counter cases, trial of—It is desirable that counter case be tried by the same judge simultaneously——by such trial the court will get opportunity for looking to all the aspects of both the cases which is necessary for arriving at a correct decision and to avoid conflicting findings.
***Lutfar Rahman Vs. Mosammnat Aleya Begum 45 DLR 57.***

**Section 533—**
Any irregularity in recording the confession is curable under section 533 CrPC.
***Ratan Kha Vs. State 40 DLR 186.***

**Section 533—**
Credibility of confessional statement—No substantial compliance would .cure the defect of noncompliance with the provisions of section 164 CrPC on material points. Confessional statement in a plain paper without the narration of questions and answers would not, by itself, make it inadmissible in evidence. Certificate given by the Magistrate, who had recorded the confessional statement, as to what had happened, how he warned and gave time for reflection to the person confessing, how yet he insisted on making confession and his admitting the same to be correct and the Magistrate’s believing the same to be voluntary ought to be treated as conclusive evidence of facts stated unless shown to be otherwise.
***Abdul Hakim Vs. State 43 DLR 389.***

**Section 537—**
When sanction for prosecuting a government servant is invalid, the trial Court would not be a court of competent jurisdiction and a defect in the jurisdiction of the court can never be cured under sections 5 & 7 CrPC.
***Abdul Hakim Vs. State 45 DLR***

**Section 537—**
The remand order amounts to double jeopardy for the petitioners and offers chance to the prosecution to remedy its lacuna. Such a remand should not be made.
***Fazal Vs. State 43 DLR 40.***

**Section 537—**
Cognizance—Scheduled and non—scheduled offence—When the very taking of cognizance of an offence, the framing of accusation and the trial upon charges of both scheduled and non—scheduled offences together suffered from complete lack of jurisdiction, this could not at all be considered to be a mere defect in the framing of charges which by aid of section 537 of the CrPC can be cured if prejudice is not caused to the accused. A mere defect in framing of charge by the Court having jurisdiction is one thing while framing of charge without having any jurisdiction is a completely different thing.
***Mozammel (Md) Huq Vs. State 43 DLR 614.***

**Section 537—**
Adoption of a procedure prohibited by Code of Criminal Procedure is not curable by section 537 CrPC.
***Lal Miah Vs. State 40 DLR 377***

**Section 537—**
Defect in framing of charge when not curable—a mere defect in framing of charge by a court having jurisdiction is one thing while the framing of charge without having any jurisdiction is a completely different thing. The contention that section 537 of the Code could be invoked to cure defect due to lack of jurisdiction cannot be accepted. Joinder of scheduled and non-scheduled offences and the trial of both these offences were illegal.
***Mozammel Hoq Vs.State 42 DLR 527.***

**Section 540—**
Examining prosecution witnesses as Court witnesses—Magistrate has power to summon material witness whose relevance is disclosed in evidence, but he cannot examine them as Court witness— Magistrate’s order has been modified accordingly.
***Helaluddin & others Vs. State 40 DLR 352.***

**Section 540—**
Scope of section 540 consists of two parts—the first part is discretionary and the second part is obligatory.
***Md. Jalaluddin Ahmed Vs. State 40 DLR 564.***

**Section 540—**
It is obligatory for the Court to allow the examination of witness if he thinks it essential for the just decision of the case. The accused will not be prejudiced if the witness is examined in the Court.
***Md. JaIaluddin Ahmed Vs. State 40 DLR 564.***

**Section 540—**
The ends of justice has been negatived by the trial Court by refusing to recall certain witnesses for cross— examination by the appellant.
The trial Court is not meant for only convicting or acquitting the accused persons but their duty is to administer justice. In the present case before us by refusing to recall certain witnesses for cross—examination by the appellant the ends of justice have been negatived by the trial Court. In such circumstances for ends of justice we are inclined to set aside the order dated 1.11.88 passed by the learned Tribunal and direct him for affording opportunity to the appellant to cross—examine the witnesses already examined by the prosecution. This is very much necessary for ends of justice.
***Jamil Siddique Vs. State 41 DLR 30.***

**Section 540—**
Court’s power to examine witness not named in the FIR—the scope of the provision in CrPC in this connection .pears to be wide. It gives discretion to the court to examine such witness at any stage. It is imperative for the Court to examine such a witness if his evidence appears to be essential for a just decision.
***Akhtar Jahan Vs. State 42 DLR 413.***

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