

**RMM LAW COLLEGE SAHARSA**

**CODE OF CRIMINAL PROCEDURE**

**IIIrd Part**

**Paper -3**

**TOPIC- PROVISIONS AS TO  
ACCUSED PERSONS OF**

**Topic- APPEALS**

**Lecture Notes by- BINOD KUMAR JHA**

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**and the name of the accused**

**376. No appeal in petty cases.**

Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:—

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground

(i) that the person convicted is ordered to furnish security to keep the peace; or

(ii) that a direction for imprisonment in default of payment of fine is included in the sentence;

or

(iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

### **377. Appeal by the State Government against sentence.**

(1) Save as otherwise provided in sub-section (2), the State Government may in any case of conviction on a trial held by any Court other than a High Court, direct the Public prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

#### **Comments**

It would be clearly violative of Article 21 of the Constitution of India to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision to enhance the sentence; *State of Karnataka v. Benoy Thomas*, (1997) 2 Crimes 141 (Kant).

### **378. Appeal in case of acquittal.**

(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated

by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

### **Comments**

(i) In an appeal against acquittal the appellate Court has the undoubted power to review the entire evidence and to come to its own conclusion, but, in doing so, it should not only consider every matter on record having a bearing on the question of fact and the reasons given by the Court below in support of its order of acquittal but also should express the reasons in its judgment which let it to hold that the acquittal was not justified; *State of Maharashtra v. Joseph Mingel Koli*, (1997) 2 Crimes 228 (Bom).

(ii) If two conclusions can be based upon the evidence on record the High Court should not disturb the finding of acquittal recorded by the trial Court; *State of Maharashtra v. Suresh Nivrutti Bhurare*, (1997) 2 Crimes 257 (Bom)