

RMM LAW COLLEGE SAHARSA

CODE OF CRIMINAL PROCEDURE

IIIrd Part

Paper -3

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

Topic- REFERENCE AND REVISION

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and the name of the accused

CHAPTER XXX - REFERENCE AND REVISION

395. Reference to High Court.

(1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation.—In this section, "Regulation" means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

(2) A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any Court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.

396. Disposal of case according to decision of High Court.

(1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Court by which the reference was made, which shall dispose of the case conformably to the said order.

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

397. Calling for records to exercise powers of revision.—

(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 its or his local 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 or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Comments

(i) When any revision in High Court is dismissed on the ground of limitation High Court can exercise power of revision suo moto under section 397; *Municipal Corporation of Delhi v. Girdhari Lal Sapru*, AIR 1981 SC 1169: (1981) Cr LJ 632: (1981) 2 SCC 758: (1981) SCC (Cr) 598.

(ii) Where both Sessions Judge and High Court having concurrent powers, second revision would not be competent under section 397 (3); *Asghar Khan v. State of Uttar Pradesh*, AIR 1981 SC 1697: (1981) Cr LR SC 481.

398. Power to order inquiry.

On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 of sub-section (4) of section 204 or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.