

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

399. Sessions Judge's powers of revision.

(1) In the case of any proceeding the record of which has been called for by himself the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Comments

It is settled law that no order to the prejudice of an accused or any other person can be made unless the said accused or the said person has been given an opportunity of being heard; *mohd. Afzal v. Noor Nisha Begum*, (1997) 2 Crimes 493 (Del).

400. Power of Additional Sessions Judge.

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 Sessions Judge.

401. 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 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such

application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

Comments

(i) When High Court adjourned all cases of a particular Advocate for some period it was wrong on part of High Court to pass *ex parte* order in revision application in which that particular Advocate was appearing; *Chandraeshwar Nath Jain v. State of Uttar Pradesh*, AIR 1981 SC 2009: (1981) Cr LJ 1690: (1981) SCC (Cr) 609.

(ii) High Court was not justified in interfering with current findings of fact and acquitting accused in offence of criminal breach of trust; *State of Karnataka v. Maygowda*, AIR 1982 SC 1171: (1982) Cr LJ 1397: (1981) 4 SCC 429: (1981) SCC (Cr) 849: (1982) Cr LR (SC) 39.

(iii) When accused acquitted without considering material evidence with inconsistent and faulty reasonings and probative value of FIR also ignored, High Court was justified in directing retrial; *Ayodhya Dube v. Ram Sumer Singh*, AIR 1981 SC 1415: (1981) Cr LJ 1016: (1981) Cr LR (SC) 430.

(iv) When complaint makes out *prima facie* case in proceeding instituted against partnership firm along with its partners and its managing partner dies, High Court should not quash proceeding;

Drugs Inspector v. B.K.A. Krishnaiah, AIR 1981 SC 1164: (1981) Cr LJ 627: (1981) 2 SCC 454: (1981) SCC (Cr) 487: (1981) Cr LR (SC) 196.

(v) In absence of any statutory provision High Court cannot award sentence below the prescribed minimum under any special circumstances; *State of Andhra Pradesh v. R. Ranga Damappa*, AIR 1982 SC 1492.

(vi) The revisional jurisdiction when involved by a private complainant against an order of acquittal ought not to be exercised lightly and that it could be exercised only in exceptional case where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice; *Kaptan Singh v. State of Madhya Pradesh*, (1997) 4 Supreme 211.