

# **Essentiality of Provisional Jurisdiction under the Code of Criminal Procedure, 1973: A Compendious Analysis**

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## ***Abstract***

*The basic premise of the research is to understand the necessity of the revisional jurisdiction exercised by the criminal courts under the Code of Criminal Procedure, 1973. Over the years, the courts have managed to widen their powers to provide an alternate remedy to the aggrieved parties and the power of revision is one such remedy.*

*Section 397 to 405 of the Code provides for the revisional powers of the criminal courts. The research aims to understand the working of the revisional jurisdiction in the Court of Session and the High Court. Further, the research underlines the powers of the inferior courts and the High Court to examine the records of cases. Another object of the research is to comprehend the applicability of legal principles like audi alterem partem with respect to the revisional jurisdiction of the courts. Moreover, the research examines the basic difference between an appeal and a revision application. Finally, the research concludes stating the essentiality of having revisional jurisdiction. The Courts, over the years, have managed to uphold its efficacy through multiple verdicts which have in turn provided a platform to the aggrieved parties to seek an alternate remedy.*

**Keywords:** *Audi Alterem Partem, Criminal Courts, Miscarriage of Justice, Revisional Jurisdiction,*

## INTRODUCTION

Under the Code of Criminal Procedure, 1973 an aggrieved person could go in appeal against the decision of a criminal court to the higher court. However, this right to appeal is not available in each and every case and confined to cases specifically provided under law. Further, even in such specified cases, the Code ordinarily allows only one appeal, and a review of the decision of the appellate court is not usually permissible by way of further appeal to yet another higher court. In order to avoid the possibility of any miscarriage of justice or flaw in procedure where no right to appeal is available, the Court has introduced another review procedure called revision.

Sections 397 to 405 deal with the powers of revision conferred on the higher courts and the procedure to regulate these powers. The powers of revision given to such courts are very comprehensive but discretion in character. Thus, no party has a right to be heard before the court. The revisional powers are wide but are subject to certain limitations:

- a) In cases where an appeal lies but no appeal is brought, ordinarily no proceeding by way of revision shall be entertained on the request of the party who could have appealed.
- b) The revisional powers cannot be exercised where the order passed is an interlocutory order.
- c) A finding of acquittal cannot be converted into one of conviction under the revisional jurisdiction.
- d) A person is allowed to file only one application for revision either to the Court of Session or to the High Court; if once such an application is made to one court, no further application by the same person shall be entertained by the other court.

Therefore, the revisional jurisdiction of the courts is limited vis-a-vis the appellate jurisdiction. This jurisdiction can only be exercised under exceptional circumstances and are subject to multiple limitations as discussed above. However, this jurisdiction is essential in the working of the Code since it provides an alternate remedy to the parties and allows the courts to rectify any irregularity in the procedure.<sup>1</sup>

## REVISIONAL JURISDICTION

Sections 397 to 405 of the Code of Criminal Procedure, 1973 are related to the powers of revision. Sections 399, 400 and 401 exclusively pertain to powers of revision of a Sessions Judge, an Additional Sessions Judge and the High Court, Section 397 (read with Section 400) authorises these judges and the High Court to call for the records of the subordinate courts for the objective of exercising the powers of revision and Section 398 allows them to order further inquiry under certain situations. These provisions, especially Sections 397 to 401, are conjugated and should be read together.

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<sup>1</sup> R.V. Kelkar, *Criminal Procedure*, (Eastern Book Company, 6<sup>th</sup> Edition, Lucknow, 2014), p. 693

## **POWER TO CALL FOR AND EXAMINE THE RECORD OF ANY PROCEEDING BEFORE SUBORDINATE COURT**

Under Section 397 of the Code of Criminal Procedure, 1973<sup>2</sup> the High Court or the Sessions Court is authorised to call for and examine the record of any proceedings before any subordinate Court and assure itself as to the accuracy, suitability and legality of any order passed by the subordinate Court.<sup>3</sup> If any flaw, contortion or illegality justifying, remedial action, is found on the examination of the record, the subsequent Sections, particularly 398 to 401, authorise the superior Courts to pass befitting orders to abolish the miscarriage of justice. The purpose of revisional jurisdiction is to confer paternal and supervisory jurisdiction upon superior criminal courts.<sup>4</sup>

Section 397(1) mentions the term “proceeding” which does not have any reference by itself to the commission or trial of an offence. Certain provisions, for instance Sections 125, 126, 133, 144 etc., in the Code are not necessarily concerned with the commission or prevention of an offence. The term “proceeding” cannot be provided such a regulative meaning; a proceeding cannot be said to have any reference by itself to the commission or trial of an offence.<sup>5</sup> “Proceeding” is a very broad term, and is inclusive of any judicial proceeding taken before any subordinate criminal court even though it may not relate to any particular offence. It has been held that the test is not the nature of the proceeding but the nature of the court in which that proceeding is held.<sup>6</sup>

The word “inferior” under Section 397(1) does not carry prejudice or any recommendation that the court is under the administrative directions of the superior court. Inferior or subordinate criminal court strictly means judicially inferior to the High Court (or Sessions Court). A court is subordinate to another court when an appeal lies from the former to the latter.<sup>7</sup> The Sessions Court is, therefore, inferior to the High Court under Section 397(1) and the High Court has the

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<sup>2</sup> SECTION 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 purpose of this sub-section and of Section 398.

(2) The powers of revision conferred by sub-section (1) shall be 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.

<sup>3</sup> *Ishar Singh v. State of Punjab*, 1974 Cri LJ 231 (P&H); *S.P. Mallik v. State of Orissa*, 1982 Cri LJ 19, 22 (Ori).

<sup>4</sup> *Purshottam Vijay v. State*, 1982 Cr LJ 243, 248 (MP).

<sup>5</sup> *Ujamshi Govindji Sanghadia v. Emperor*, AIR 1946 Bom 533 (FB).

<sup>6</sup> *Public Prosecutor v. L. Ramayya*, (1975) Cr LJ 144, 155-56 (AP) (FB)

<sup>7</sup> *Krishnaji Vithal v. Emperor*, AIR 1949 Bom 29.

power to call for and examine the record of any proceeding before the Sessions Court.<sup>8</sup> It has been decided that the Sessions Court has revisional jurisdiction in relation to the appellate judgment of the Court of the Assistant Sessions Judge and the Court of the Chief Judicial Magistrate.<sup>9</sup>

For the object of Sections 397 and 398, the explanation to 397(1) simply elucidates that all Magistrates including Executive and Judicial shall be considered inferior to the Sessions Judge. A revision may, therefore, lie from the order of Additional District Magistrate ordering possession of a room to the landlord, to the Sessions Court. The constitutional hierarchy being decided that all the Magistrates are subordinate to the High Court and the High Court has been empowered with superintendence and supervision under Article 227 of the Constitution<sup>10</sup>, there was no compulsion for the legislature to clarify in the explanation that all Magistrates are subordinate to the High Court. The Court has also pointed out that Executive Magistrates are subordinate to the High Court.<sup>11</sup> It is pertinent to note that a Magistrate holding an inquiry under Section 176 does not function as a criminal court, and thus, the records of such an inquiry are subject to any examination by the High Court under Section 397.

Just like appeal, the court exercising revisional jurisdiction under Section 397(1) has full discretion in the matter of bail. The discretion is to be exercised judicially after examining all the circumstances of the case.

Authority given to the revisional courts clearly indicates that the revisional court can act either on its own motion or on the motion of even an unknown person who may be crucial in bringing to the knowledge of the revisional court a matter which otherwise the revisional court may not have know. Of course, the normal course of the High Court or Court of Session to be expropriated of a matter is either at the instance of the prosecution or the accused or the High Court or Court of Session itself, but in some rare cases information may be received by the High Court or Court of Session even from an unknown person. Therefore, the revisional court can intervene on information printed in the newspaper or a placard on a wall or on an anonymous postcard, provided it considers that reasonable ground has been established to justify its doing so.

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<sup>8</sup> *Thakur Das v. State of M.P.*, (1978) 1 SCC 27

<sup>9</sup> *Gopalan v. State of Kerala*, 1981 Cri LJ 1217, 1224 (Ker).

<sup>10</sup> ARTICLE 227. POWER OF SUPERINTENDENCE OVER ALL COURTS BY THE HIGH COURT.-(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such Courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts;

and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any Court or tribunal constituted by or under any law relating to the Armed Forces.

<sup>11</sup> *Mansur v. State of M.P.*, 1986 Cri LJ 57, 59 (MP)

At the same time, the revisional court must be reluctant in taking action on an application for revision presented by a third party on its own responsibility and without authority from either of the parties. It becomes the responsibility of the revisional court to see that an unknown person to the proceedings does not employ his information as a tool of revenge or attempt to serve vested interests.<sup>12</sup> The dispute whether an unknown person has a right to appeal in a proceeding initiated *sou motu* (in its own cause) by the court has been answered in the negative. However, the Supreme Court stated that an unknown person's revision petition would be maintainable.

Section 397(2) prohibits the practice of revisional power in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings. This provision has been added to fast track the disposal of criminal cases. It was believed that revision petitions against interlocutory orders would not only delay justice but might also deny it. Thus, Section 397(2) ensures a statutory prohibition on the power of revision with respect to any "interlocutory order" and thereby intends to bring about quick disposal of criminal cases.<sup>13</sup> However, the prohibition does not prejudice any party aggrieved by the interlocutory order as such party can always challenge it in due course if the final order goes against it.

The term "interlocutory order" has not been defined in the Code of Criminal Procedure, 1973. A logical interpretation of the term would signify that an "interlocutory order" is one which is passed at some intermediate stage of proceeding generally to advance the cause of justice for the final determination of the rights between the parties.<sup>14</sup> The method of ascertaining final and interlocutory order is the same in both civil and criminal cases. The test is whether the order finally extinguishes the rights of the parties or leaves them to be decided by the court in the usual manner. If the order does not finally extinguish the rights of the parties and leaves the suit at the mercy of the court, the order will remain interlocutory irrespective of the stage it was passed and also irrespective of the final verdict of the inferior matters dealt by it. The acceptance or rejection of a bail application is an interlocutory order. But there have been conflicting views regarding this. While the Allahabad High Court, taking a cue from the Supreme Court verdicts, held that a bail order is an interim order<sup>15</sup>, the Bombay High Court gave a completely different opinion.<sup>16</sup> In fact, the Supreme Court has mentioned bail order as an example of "interlocutory orders" and the Allahabad High Court provided prominence to it. The Bombay High Court also banked upon the Supreme Court verdicts to arrive at a conjecture.

The Supreme Court in the case of *Madhu Limaye v. State of Maharashtra* stated that there are certain orders which are neither interlocutory nor final and it appears that the verdict of the Bombay High Court is in line with the scheme of the Code.

The Bombay High Court has drawn a line between an application for bail and a revision application against a bail order stating that:

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<sup>12</sup> *Pratap v. State of U.P.*, (1973) 3 SCC 690

<sup>13</sup> *Madhu Limaye v. State of Maharashtra*, (1977) 4 SCC 551.

<sup>14</sup> *Dhola v. State*, 1975 Cri LJ 1274, 1276 (Raj)

<sup>15</sup> *Bhola v. State of U.P.*, 1979 Cri LJ 718 (All)

<sup>16</sup> *R. Shakuntala v. Roshanlal Agarwal*, 1985 Cri LJ 68 (Bom)

*“When an order is passed by the trial court and the High Court is later on approached for the purpose of cancellation of the bail, the basic principle is that the order was justified when it was passed, but that on account of supervening circumstances it needed to be varied or changed or cancelled. When you file a revision application against the order granting bail, your grievance is that the order was unacceptable from the beginning.”*<sup>17</sup>

An order passed under Section 107/111 by a Magistrate is an interlocutory order.<sup>18</sup>

The test for ascertaining whether an order is final or interlocutory depends upon the fact whether such order finally extinguishes the rights of the party or leaves the matter to be determined by the court following due course. The term “interlocutory order” is not to be understood in any broad or artistic sense; it merely signifies orders of strictly interim nature which have no relation to the rights of the parties. For example, orders calling for witnesses, adjournment of cases, accepting or refusing bail, calling for reports and such other steps in the aid of the pending proceeding are all interlocutory orders.<sup>19</sup> However, it is important to note that the term “interlocutory order” shall not be equated with the term “final order”. An order may be passed during the pendency of the trial which may neither be final nor interlocutory. There may be a middle ground between the two, and the prohibition under Section 397(2) shall not be drawn to such interlocutory orders. According to the Supreme Court, it is not recommendable to make an inventory of orders to ascertain their nature whether they are final, interlocutory or neither. An order rejecting the plea of the accused on a point which when accepted, will conclude the particular proceeding, will not be considered as an “interlocutory order” within the meaning of 397(2). But an order taking cognizance was considered final that be revised under Section 397. Section 482 is not required to quash such orders. An order for framing charge cannot be revised.

Supreme Court has continuously stated that the term “interlocutory order” under Section 397(2) has to be interpreted broadly in favour of the accused to ensure impartiality of the trial because the prohibition mentioned under the section would be applicable to many cases filed before the court. Therefore, if the right to revision is prohibited, the provision containing the prohibition must be narrowly construed. In other words, the revisional power of the High Court or the Sessions Court could be attracted if the order was not purely interlocutory but intermediate or quasi-final.<sup>20</sup>

If an order is aimed towards a person who is not a party to the inquiry or trial, and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, then for such a person the order could not be said to be interlocutory. An order may be final with reference to the stage at which it is made, and it may also be final as to a person who is not a party to the inquiry or trial, against whom it is directed.

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<sup>17</sup> *R. Shakuntala v. Roshanlal Agarwal*, 1985 Cri LJ 68, 76 (Bom).

<sup>18</sup> *Bindbasni v. State of U.P.*, 1976 Cri LJ 1660, 1662 (All).

<sup>19</sup> *Amar Nath v. State of Haryana*, (1977) 4 SCC 137

<sup>20</sup> *V.C. Shukla v. State*, 1980 Supp SCC 92

An order framing a charge has not been considered as an “interlocutory order” within the meaning of Section 397(2).<sup>21</sup> An order rejecting an application under Section 311 of the Code of Criminal Procedure, 1973 for recalling witnesses is an interlocutory order and hence, a plea of revision is not applicable in this case.

The order tendering pardon is a final order so far as the status and liability of the approvers are concerned. The other accused are clearly aggrieved by the order, and as such an order is not interlocutory in the context of Section 397(2), they can go in revision against the same.

It is important to note that the restriction on revisional power in relation to interlocutory order is not maintainable in respect of interlocutory order passed without jurisdiction. The purpose of enacting Section 397(2) was to ensure that there is quick disposal of cases because it leads to harassment of litigants. If interlocutory orders passed without jurisdiction cannot be interfered with by the revisional court at an earlier stage, then the exploitation would be far greater. Interlocutory orders without jurisdiction are null and void. The litigants cannot escape harassment merely by ignoring them and that is why the jurisdiction of the High Court is invoked to quash such orders. Section 397(2) will have no application to such interlocutory orders which though have the form of interlocutory orders are no orders at all.

There is a dispute whether a party can bypass the prohibition under Section 397(2) by invoking the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure, 1973.<sup>22</sup> The answer is no apart from certain exceptions. If the order passed is strictly interlocutory, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a circumstance which is a misuse of the procedure or for the purpose of securing the ends of justice intervention by the High Court is paramount, then nothing contained in Section 397(2) can limit the powers of the High Court under Section 482. For instance, the High Court exercising this power to quash a criminal proceeding initiated illegally or without proper jurisdiction.

Section 397(3) states that if a revision application has been made by a person either to the High Court or to the Sessions Court under Section 397(1), no further application by the person shall be entertained by them. Thus, once the Sessions Court has passed an order on an application for revision, this order is considered final and another revision application cannot be made before the High Court.<sup>23</sup> The verdict of the Sessions Court, if he is approached first, is made final (except in case of *sou motu* revision about which it prima facie appears that the powers of the High Court are intended to be affected). A person affected by the Sessions Court’s verdict has no right to approach the High Court in revision. However, later the Bombay High Court held that such a rule or practice is not fruitless and otiose and an aggrieved party cannot directly invoke the revisional jurisdiction of the High Court bypassing the Sessions Court.<sup>24</sup>

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<sup>21</sup> *N.K. Narayanan v. Vidyadharan*, 1991 Cri LJ 780 (Ker)

<sup>22</sup> SECTION 482. SAVING OF INHERENT POWERS OF HIGH COURT – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of process of any Court or otherwise to secure the ends of justice.

<sup>23</sup> *Chhail Das v. State of Haryana*, 1975 Cri LJ 129, 130 (P&H)

<sup>24</sup> *Arunkumar v. Chandanbai*, 1980 Cri LJ 601, 604 (Bom).

However, it may be pointed out that the bar on further revision as mentioned under Section 397(3) is limited to a second revision application filed by the same person only. Under Section 397(3) the important expression is “no further application by the same person shall be entertained by the other of them”. Under Section 397(3), the conclusion is compelling that a second revision at the behest of a successful party before a Magistrate who lost the revision before the Sessions Court would lie to the High Court.<sup>25</sup>

### **STATEMENT BY METROPOLITAN MAGISTRATE OF GROUNDS OF HIS VERDICT TO BE CONSIDERED BY THE COURT OF REVISION**

When the record of any trial held by a Metropolitan Magistrate is called by the High Court or Court of Session under Section 397, the Magistrate may submit with the record a statement setting forth the grounds of his verdict or order and any facts which he thinks material to the issue; and the court shall consider such statement before overturning or setting aside the said verdict. [S. 404]

According to Section 355<sup>26</sup>, a Metropolitan Magistrate is required to record specified particulars instead of writing a judgment; and in all cases in which an appeal lies from the final order either under Section 373 (appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour) or under Section 374(3) (appeals from convictions), the Metropolitan Magistrate is to record a brief statement of the reasons for the decision. The statement submitted under Section 404 supplements the inadequate record of the case and aids the court of revision to consider whether the decision of the Magistrate was justified.

#### *Power to order inquiry*

The power of the Sessions Judge under Section 398<sup>27</sup> of the Code of Criminal Procedure, 1973 is to examine any record under Section 397 or otherwise and such power can be exercised in proceedings which are subjudice or concluded at the pre-charge stage. The power under Section

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<sup>25</sup> Srinivas Gupta, *Law Relating to Criminal Procedure*, (Thompson Reuters Publication, 1<sup>st</sup> Edition, 2014),

<sup>26</sup> SECTION 355. METROPOLITAN MAGISTRATE'S JUDGMENT. – Instead of recording a judgment in the manner hereinbefore provided, a Metropolitan Magistrate shall record the following particulars, namely: -

- (a) the serial number of the case;
- (b) the date of the commission of the offence;
- (c) the name of the complainant (if any);
- (d) the name of the accused person, and his parentage and residence;
- (e) the offence complained of or proved;
- (f) the plea of the accused and his examination (if any);
- (g) the final order;
- (h) the date of such order;

(i) in all cases in which an appeal lies from the final order either under Section 373 or under sub-section (3) of Section 374, a brief statement of the reasons for the decision.

<sup>27</sup> SECTION 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 or 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 discharged unless such person has had an opportunity of showing cause why such direction should not be made.

398 is not co-extensive with Section 397 but extends far wider as the record can ``otherwise`` be examined by the Sessions Court without recourse to Section 397.<sup>28</sup>

It is absolutely clear that with respect to orders of dismissal under Section 203 or sub-section (4) of the Code and the provision of discharge under the Code are concerned; the prohibition stated under Section 397(2) against revision in relation to interlocutory orders has been removed. Unless the dismissal of the complaint falls under Section 203 or 204(4), the High Court or the Sessions Court will not have any jurisdiction in this matter.<sup>29</sup>

The expression “any person accused of an offence” indicates that discharge is related to a person accused of an offence. This expression is exclusive of a person against whom proceedings have been taken under Sections 109, 110, 125, 133 and 145 of the Code.

The proviso is authoritative and requires that no order no further order of inquiry should be passed without giving a reasonable opportunity to the accused person to satisfy the court as to why further inquiry should not be directed. It is important to note that this applies only when an accused has been discharged and it does not apply to the dismissal of a complaint. If a Magistrate, after taking into account all the facts, believes that there is no ground for proceedings against a person and, therefore, dismissed the complaint summarily, there is hardly any reason for the revision court to summon anyone as an accused or as a respondent until a further inquiry is made and it demands issuing of process.

The term “further inquiry” does not mean fresh preliminary inquiry but only re-examination of the evidence which was examined before passing of the order, which was set aside in revision, or any other evidence cited in the complaint but not examined earlier, but examined after remand.

The Sessions Court has revisional jurisdiction under Section 397 and 398 if a case has been brought before it and it is irrelevant and pragmatic to investigate as to which particular provision has actually been invoked.<sup>30</sup>

## **SESSIONS JUDGE`S POWERS OF REVISION**

Section 399 of the Code of Criminal Procedure, 1973 lays down the Sessions Judge`s power of revision.<sup>31</sup> Under Section 399(1) of the Sessions Judge, with respect to his powers under Section 397(1), may exercise all the powers which are exercisable by the High Court under Section 401(1). Section 401(1) allows the High Court to exercise revisional powers conferred on a court of appeal and in this view the Sessions Court lacks power to order summoning of a person

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<sup>28</sup> *Gurbaksh Singh v. Vir Bhan*, 1980 Cri LJ 1154, 1156 (P&H)

<sup>29</sup> *H. Basavaiah v. H.G. Krishnappa*, 1973 Cri LJ 1318, 1319 (Mys)

<sup>30</sup> Dr. N.V. Paranjape, *The Code of Criminal Procedure*, (Central Law Agency, 5<sup>th</sup> Edition, Allahabad, 2014), p.543

<sup>31</sup> SECTION 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-section (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said sub-section 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.

discharged by the Magistrate.<sup>32</sup> It is fascinating to note that though the Sessions Judge has no power to entertain any appeal against an order of acquittal under Section 378, or for enhancement of the sentence under Section 377, he can allow applications for revision against acquittal or for enhancement of sentence from the complainant or from any person or the aggrieved party. In such cases, the Sessions Judge can invoke revisional jurisdiction even in its own cause without any application. However, the Kerala High Court elucidated that while under Section 401 the High Court can exercise its revisional jurisdiction *sou motu*, the Sessions Court under Section 399 has powers of revision on being approached by a party. As such the Sessions Court will have power to increase sentence only on the request of the complainant.<sup>33</sup>

The limitations on the revisional powers of the High Court under sub-sections (2), (3) and (4) of Section 401, and enabling provision for treating the application for revision as a petition of appeal under certain circumstances as contained in Section 401(5), have all been made applicable by Section 399(2) to every proceeding by way of revision commenced before a Sessions Judge under Section 399(1).

Section 397(3) states that if an application under Section 397 calling for records of a subordinate court has been submitted by any person either to the High Court or to the Sessions Court, no further application by the same person shall be entertained by the other court. Section 399 confers requisite powers upon the Sessions Judge to dispose of revision cases, records of which have been called for by them. Section 399(3) provides that 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 a person shall be final and no further proceedings by way of revision at the instance of such person shall be entertained by the High Court. The crux of this provision is that a person cannot submit an application before the High Court and the Sessions Court simultaneously and cannot go before the High Court if his revision application has been rejected by the Sessions Court.<sup>34</sup>

### **POWERS OF REVISION OF ADDITIONAL SESSIONS JUDGE**

Under Section 400 of the Code of Criminal Procedure, 1973, if a case has been transferred to an Additional Sessions Judge by an order of the Sessions Judge, he may exercise all the powers conferred on him under this chapter.

It includes within its scope not only references and revisions but all other incidental and ancillary matters. He also has the power to dispose of an application for condoning the delay in a case transferred to him by the Sessions Judge, even if such application is filed after the transfer of case to him.

### **HIGH COURT'S POWERS OF REVISION**

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<sup>32</sup> Baldev Singh v. State of Haryana, 1988 Cri LJ 534 (P&H).

<sup>33</sup> T. Jayarajan v. P.R. Mohammed, 1999 Cri LJ 1856 (Ker).

<sup>34</sup> Ratanlal Dhirajlal, *Code of Criminal Procedure*, (Indian Law House, 19<sup>th</sup> Edition, New Delhi, 2013)

The powers of revision and the limitations on such powers of the High Court are mentioned in Section 401 of the Code of Criminal Procedure, 1973.<sup>35</sup>

### *1. Revisional Powers of High Court*

The High Court has been provided very broad revisional powers under the Code. Section 397, read along with Section 401, mentions the instances when such power can be exercised. The High Court exercises its revisional jurisdiction to decide questions regarding the accuracy, propriety and legality of any finding, sentence or order, recorded or passed by any subordinate court including the regularity of its proceedings. The purpose behind conferring revisional powers to the High Court is to surround the highest court in a State with jurisdiction of general supervision and superintendence in order to rectify grave failure or miscarriage of justice emanating from fallacious orders. The error or defect may emanate from misunderstanding of law, irregular procedure, misconception of fact or undue hardship or leniency.

Section 401(1) confers on the High Court all the powers of the appellate court as mentioned in Sections 386, 389, 390 and 391; it also authorises the High Court to direct tender of pardon to the accused person as mentioned under Section 307. In addition to these powers, specific cases under Sections 106(4), 356(4), 357(4) etc. Any order passed under any section, except interlocutory order, comes under the revisional jurisdiction of the High Court.<sup>36</sup>

The Supreme Court has stated that in a revision against the dismissal of complaint the person against whom the complaint has been made has a right to be heard under Section 401(2) and it is irrelevant whether the order under challenge is at pre-process or post-process stage.<sup>37</sup>

The revisional powers of the High Court under Sections 397 and 401 are discretionary. Revision is not a matter of right, unlike appeal. Right to appeal is a statutory right provided to the appellant whereas in a revision the court may accept or refuse to accept a revision application. These sections do not confer any right on the litigant but only conserve the power of the High Court to ensure complete justice is done and subordinate courts do not exceed their jurisdiction.<sup>38</sup>

### *2. Invocation of Revisional Jurisdiction*

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<sup>35</sup> SECTION 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 same accordingly.

<sup>36</sup> *Amrutlal v. State of Maharashtra*, 1981 Cri LJ 1728, 1729 (Bom).

<sup>37</sup> *Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel*, (2012) 10 SCC 517

<sup>38</sup> *Rajeshwar Prasad v. State of Bihar*, 1972 Cri LJ 258

The High Court can exercise revisional powers *sou motu*, or on the application of any aggrieved person or on the application of any other person subject to two limitations:

- a) Section 399(3) mentions that when a revision application is made by a person before the Sessions Court, the High Court will no longer entertain such application by that person.
- b) As per Section 401(4), if an appeal lies but no appeal has been brought before the court, no application of revision shall be brought before the court. So, in a nutshell, a revision petition cannot be filed if the right of appeal has not been exercised.<sup>39</sup>

It is well established that the *sou motu* power of the High Court is not affected by the prohibition under Section 401(4). It is pertinent to observe that the High Court is under no compulsion to act in revision merely through an application by an aggrieved party. The High Court keeps an eye and wherever it finds that justice has been compromised, it takes a *sou motu* act to correct infringement of the law.<sup>40</sup> According to Section 377 only the State Government or the Central Government can file an appeal in the High Court for the enhancement of the sentence. However, this is not exclusive of the revisional jurisdiction of the High Court to act *sou motu* for increasing the sentence in relevant cases under Section 401 read with Section 386(c)(iii). Appropriateness of a case is determined by the High Court.<sup>41</sup>

A private party does not have a locus standi in a case instituted on a police report and cannot demand an adjudication on an application in revision. He cannot claim *locus standi* even if the Public Prosecutor formally allows him to seek revision inasmuch as a Public Prosecutor cannot confer a right upon a party under the Code. But a private party can bring to the notice of the High Court and the Sessions Court any illegality committed by any subordinate court. In such cases, revisional jurisdiction can be exercised under exceptional circumstances. However, with such a revision application it would not be tangential to keep in mind the fact that the court's jurisdiction has been invoked by a private party and that the criminal law is not to be used as a tool to seek revenge by the aggrieved party. Therefore, if the court ascertains some obtrusive flaw in the procedure or there is an apparent mistake on a point of law and consequently there has been a gross miscarriage of justice, revisional jurisdiction can be exercised.<sup>42</sup>

In a case, while the appeal was pending in the Sessions Court a revision application was filed in the High Court by the complainant who also prayed for transferring the appeal from the Sessions to the High Court to be heard along with the revisions. The court rejected the prayer for transfer and ruled that the criminal revision case should be kept pending till the disposal of appeal by the Sessions Court to allow the complainant to pursue the same after the appeals are disposed of by the Sessions Court.<sup>43</sup>

### 3. Exercise of Revisional Jurisdiction

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<sup>39</sup> *K. Ramachandran v. V.N. Rajan*, (2009) 14 SCC 569

<sup>40</sup> *State of H.P. v. Jagar Singh*, 1989 Cri LJ 1213 (HP)

<sup>41</sup> S.C. Sarkar, *Commentary on Code of Criminal Procedure*, (Lexis Nexis, Wadhwa and Co. Nagpur, 3<sup>rd</sup> Edition, 2014)

<sup>42</sup> *Nesar Ahmad v. Ekram Ahmad*, 1967 Cri LJ 801, 809

<sup>43</sup> *A. Jogi Naidu v. Koyalada Venkataramana*, 1986 Cri LJ 963 (AP)

The exercise of jurisdiction under Section 401 is discretionary and limited to exceptional cases where there is glaring flaw in the procedure and gross miscarriage of justice.<sup>44</sup> It must only be used to rectify grave injustice. It is impossible and impracticable to lay down a rigid test of uniform application and the matter has to be left to the discretion of the High Court. It has been decided by the Allahabad High Court that revision petition should be disposed of on merits if the petitioner is not represented by counsel.<sup>45</sup> Usually, the High Court, while exercising revisional jurisdiction, would not and does not intervene with the parallel findings of the subordinate courts on a question of fact; but where the finding is debauched as to cause miscarriage of justice, the court will and must interfere.<sup>46</sup> However, in cases where no appeal is provided against the order of conviction and sentence (or against any other final order of the subordinate court), and a revision petition is the only remedy on account of the limitations contained in the Code, the court of revision will be more cautious in examining the evidence. However, the High Court would not be justified in depending upon the documents other than those referred to in Sections 239 and 240. Moreover, it would not be reasonable to invoke Section 482 except in rare cases. The Supreme Court has held that only unimpeachable documents alone should be looked into while exercising revisional jurisdiction. Therefore, it is true that the revisional jurisdiction in its scope does not demand re-evaluation of evidence. In a revision on the request of a private party, the court exercises only a limited jurisdiction and it cannot act as an appellant court.<sup>47</sup> Therefore, the High Court cannot ponder upon question of fact in its revisional jurisdiction. Moreover, a plea of fact not raised before the trial court cannot be gone into for the first time in revisional jurisdiction. However, that is an aspect which must be lauded in the light of the limitation on the right to appeal.

While exercising the powers of revision the High Court has to work under two statutory limitations:

- a) Power of revisional jurisdiction is not applicable in relation to interlocutory orders. [S. 397(2)]
- b) The High Court while exercising its revisional jurisdiction cannot convert a finding of acquittal into one of conviction. [S. 401(3)]

Section 401(1) states that while exercising the revisional jurisdiction the High Court may exercise any of the powers conferred on the court of appeal. As the court of appeal is authorised under Section 386(a) to overturn an order of acquittal or to direct a retrial, the High Court in the exercise of its revisional powers would also be empowered to record a conviction by overturning the order of acquittal. But Section 401(3) bars the High Court from converting a finding of acquittal into one of conviction. Thus, it is obligatory on the High Court to ensure it does not convert the finding of acquittal into one of conviction by ordering a retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This limits the power of the High Court to set aside a finding of acquittal in revision, particularly when the State had not

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<sup>44</sup> *Amar Chand v. Shanti Bose*, (1973) 4 SCC 10

<sup>45</sup> *Mithae Lal v. State of U.P.*, 2009 Cri LJ 612 (All).

<sup>46</sup> *Narayan Tewary v. State of W.B.*, AIR 1954 SC 726

<sup>47</sup> *Dharam v. State of Haryana*, 2009 Cri LJ (NOC) 49 (P&H)

thought fit to appeal to the High Court against the finding of acquittal and when the High Court is exercising the revisional jurisdiction on the request of the private parties. The Supreme Court has held that the power of setting aside the order of acquittal on the request of private parties should be used only under exceptional circumstances when there is a glaring flaw or a gross miscarriage of justice.<sup>48</sup>

The Supreme Court explored the character of revisional jurisdiction and understood that the High Court cannot intervene with positive finding in favour of marriage and parentage of children but where the finding is negative, the High Court could entertain revision, re-evaluate evidence. It was further pointed out that the revisional court can intervene only if there is any illegality in order or there is any significant discrepancy in procedure or of mistake in jurisdiction.<sup>49</sup>

The Supreme Court further reiterated that revisional jurisdiction can be exercised by the High Court on the request of a private complainant in exceptional cases:<sup>50</sup>

- a) Where the trial court has wrongly rejected evidence which the prosecution wished to produce.
- b) Where the admissible evidence was wrongly considered inadmissible.
- c) Where the substantial evidence has been overlooked either by the trial court or the appellate court, or the order is passed by considering irrelevant evidence.
- d) Where the trial court acquitted the person without having jurisdiction.
- e) Where the acquittal is based on the compounding of offence which is invalid as per law.

If a retrial is directed in the exercise of revisional powers by the High Court, the evidence already recorded at the initial trial cannot be erased or wiped out from the record of the case. The trial judge has to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on retrial.<sup>51</sup>

#### *4. Audi Alteram Partem (No man should be condemned unheard)*

This legal principle is religiously followed in all stages of a criminal trial. The rule contained under Section 403 of the Code of Criminal Procedure, 1973<sup>52</sup> is inconsistent with the above principle but the inconsistency is more apparent than real.

As noted earlier, the proviso to Section 398 bars a revisional court to direct further inquiry against any person who has been discharged, unless such person has had an opportunity of showing cause. Similarly, Section 401(2) states that the revisional court shall not pass any order to the prejudice of the accused or other person, unless he has had an opportunity of being heard either personally or through pleader. Section 401(2) is an exception to Section 403. Where the High Court while exercising its revisional jurisdiction rabidly revised the character of the punishment awarded by the subordinate court without issuing notice to the accused to show cause against such alteration, the High Court was held to be in error and its order was set aside

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<sup>48</sup> *K. ChinnaSwamy Reddy v. State of A.P.*, AIR 1962 SC 1788

<sup>49</sup> *Pyla Mutyalamma v. Pyla Suri Demudu*, (2011) 12 SCC 189

<sup>50</sup> *Sheetla Prasad v. Sri Kant*, (2010) 2 SCC 190

<sup>51</sup> Monica Sakhrani, *Citizen's Guide to Criminal Law*, (Universal Law Publication, 2009), p. 80

<sup>52</sup> SECTION 403. OPTION OF COURT TO HEAR PARTIES – Save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.

and the case was sent back for disposal.<sup>53</sup> However, where the accused had received full opportunity to show cause and no prejudice had been caused to him by reason of omission of a notice under Section 401(2), the order of the revisional court would not be subverted by the absence of notice to the accused person.

It is important to understand that Section 403 is an exception to the general rule of *audi alterem partem* as no party has a right to be heard. However, the Section does not infringe the principle of natural justice.

Section 401 read with Section 386(c)(iii) allows the High Court to enhance the sentence in relevant cases while exercising the revisional power. However, Section 386(c)(iii) is connected with Section 377<sup>54</sup>; and the Section 377(3) requires that the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause and while showing cause the accused may plead for acquittal or reduction of the sentence. Thus, it mandatorily follows that when the question of enhancement of the sentence comes before the revisional court which may be the High Court or a Court of Session, the extent of the right of the accused to be heard will be the same as given under Section 377(3). The right of the accused under Section 377(3) and Section 401(2) is not affected by the prior dismissal of his appeal against the conviction. The principle of finality of judgments of appellate courts under Section 393 cannot be invoked against the above said right of the accused since the section itself states that its operation shall have no impact on the provisions of Section 377 or the provisions of Chapter XXX of the Code.

#### 5. Relationship between application for revision and application of appeal

If an application for revision has been made before the High Court by any person in case where an appeal lies, and the High Court is convinced that the application was made under the mistaken belief that no appeal shall lie and may treat the revision application as a petition of appeal. This is a beneficial provision as it prevents miscarriage of justice. The object of all rules of procedure

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<sup>53</sup> *Jangal Prasad v. State*, AIR 1953 SC 467

<sup>54</sup> SECTION 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 against the sentence on the ground of its inadequacy.

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by the Magistrate; and

(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, 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 against the sentence on the ground of its inadequacy.

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, 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.

is to allow justice to be done. As such every procedure which advances the disbursement of justice should be considered permissible unless it is prohibited.<sup>55</sup>

In a case where the revision petition was filed within the period of limitation prescribed for filing an appeal, the High Court may treat the revision petition as an appeal under Section 401(5) in appropriate circumstances.

#### 6. No abatement of revision by death of the petitioner

The revisional powers of the High Court under Section 401 read with Section 397 do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that the subordinate criminal courts do not exceed their jurisdiction or abuse their powers under the Code. Thus, whether it was an accused person or it was a complainant who has moved the High Court in its revisional jurisdiction and the revision petition has been admitted, the matter has to be heard and decided irrespective of the fact whether the petitioner is dead or alive. In hearing and determining cases under Section 401, the High Court discharges its statutory function of supervising the administration of justice on the criminal side. Hence the considerations applying to abatement of an appeal under Section 394 may not be applicable in the case of revisional jurisdiction.<sup>56</sup>

### **POWER OF HIGH COURT TO WITHDRAW OR TRANSFER REVISION CASES**

Section 402 of the Code of Criminal Procedure, 1973<sup>57</sup> deals with transfer or withdrawal of revision cases by the High Court. In case of a joint trial, if one of the several accused persons moves the High Court and any other accused person moves the Sessions Court on the matter, there would be a conflict of jurisdiction. In order to avoid such a clash, the High Court in such situations must decide as to which of the two courts should deal with the matter, having regard to the general convenience of the parties and the importance of the questions involved. If the High

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<sup>55</sup> *Mahesh Kumar v. State*, 1978 Cri LJ 390, 391 (All)

<sup>56</sup> *Bhupendra Nath Barik v. Brahmachari Giri*, 1976 cri LJ 552 (Cal).

<sup>57</sup> SECTION 402. POWER OF HIGH COURT TO WITHDRAW OR TRANSFER REVISION CASES – (1) Whenever one or more persons convicted at the same trial makes or make application to a High Court for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide, having regard to the general convenience to the parties and the importance of the questions involved, which of the two Courts should finally dispose of the applications for revision and when the High Court decides that all the applications for revision should be disposed of by itself, the High Court shall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall direct that the applications for revision made to it be transferred to the Sessions Judge.

(2) Whenever any application for revision is transferred to the High Court, the Court shall deal with the same as if it were an application duly made before itself.

(3) Whenever any application for revision is transferred to the Sessions Judge that Judge shall deal with the same as if it were an application duly made before himself.

(4) Where an application for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Court or any other Court at the instance of the person or persons whose applications for revision has been disposed of by the Sessions Judge.

Court transfers the revision petition to the Sessions Court and it is disposed of by that court, no further revision shall lie to the High Court.

### **HIGH COURT'S ORDER TO BE CERTIFIED TO LOWER COURT**

Provisions contained under Section 405 of the Code of Criminal Procedure, 1973<sup>58</sup> are applicable to all revisions by the High Courts whether under Section 397 or 401 of the Code.

### **CONCLUSION**

There is no doubt that the power of revisional jurisdiction exercised by the courts is extraordinary and limited to certain cases. This power is used to correct any glaring flaw in the procedure or rectify any gross miscarriage of justice. It has been pointed out that the power of revision is different from that of appeal. An appeal is a matter of right whereas revision depends on the discretion of the court. Moreover, the principle of *audi alterem partem* is not applicable in the cases of revision. However, the revisional jurisdiction allows the courts to increase the sentence or pardon the accused, a power not given to courts when it comes to appeal. The powers provided under this Chapter are far-reaching and comprehensive.

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<sup>58</sup> SECTION 405. HIGH COURT'S ORDER TO BE CERTIFIED TO LOWER COURT – When a case is revised under this Chapter by the High Court or a Sessions Judge, it or he shall, in the manner provided by Section 388, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court 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.