Appeals, Revisions and Transfer of Criminal Cases vis-à-vis Special Power of High Court.

- **Appeals under CrPC**

  Powers to be exercised by an appellate court are provided u/s 386 of the CrPC. The powers of an appellate Court are as wide as of trial court and the appellate court can re-appreciate whole evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. But where two views are possible on the same evidence and the findings recorded by the trial court are not perverse, appellate court should not interfere with the findings of the lower court. The appellate court can re-appreciate the entire evidence on record. The appellate court should normally give due weight to the decision of the trial court. The appellate court should keep it in mind that the trial court had distinct advantage of watching demeanour of the witnesses.

  Case laws-

  - *Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537*
  - *Baby Vs. Inspector of Police, (2016) 13 SCC 333*
  - *Lalita Kumari Vs. State of UP, (2014) 2 SCC1*

- **No right of appeals in certain cases.-**

  Though, ordinarily, a conviction by a criminal court is subject to an appeal to a higher court as provided in the Code, there are, however, certain cases in which the Code, does not give a right of appeal. They are:

1. Generally speaking, where an accused person has pleaded guilty in the trial court, such trial court being either

a magistrate of the first class or a presidency magistrate, a court of session or the High Court, there is no right of appeal except as to the extent or legality of the sentence. (Section 375)

2. Where a magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees.(section 376 (c))
3. There is no right of appeal where a a court of session or metro Politian Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred two rupees, or of both such imprisonment and fine; (section 376 (b))
4. 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; (section 376 (a))
5. Where a presidency magistrate, the Court of Session for Greater Bombay or the High Court passes a sentence of imprisonment not exceeding six months or of fine not exceeding two hundred rupees, an appeal is barred by the Code.
6. There is no right of appeal when a person tried summarily has been sentenced to a fine not exceeding two hundred rupees. (Section 376 (d))

- **Appeal against acquittal (Sec. 378 CrPC) :**

(i) U/s 378(1)(a) CrPC, the District Magistrate may direct the public prosecutor to file an appeal against acquittal recorded by Magistrate in respect of a cognizable and non-bailable offence.

(ii) U/s 378(1)(b) CrPC, the State Government may direct the public prosecutor to file an appeal to the

High Court from an original or appellate order of acquittal recorded by Sessions Judge.

(iii) While deciding an appeal against a judgment/order of acquittal, the appellate court has powers to re-appreciate the evidence on record but when two views are reasonably possible on the basis of evidence on record, the view which is favourable to the accused should be adopted. If two views on the same evidence, one of acquittal and another of conviction, are equally possible, then the appellate court should normally not interfere with the judgment/order of acquittal recorded by the lower court. Where the findings recorded by the lower court are not perverse and based on surmises & conjectures, the scope for interference with the order of acquittal by the appellate court is limited. Acquittal recorded by the trial court should be disturbed by the appellate court only when there are substantial and compelling reasons.

Case laws-

- *Raja Vs. State of Karnataka, (2016) 10 SCC 506*
- *Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537*
- *Mookkiah Vs. State of T.N., AIR 2013 SC 321*
- *State of Rajasthan Vs. Shera Ram, AIR 2012 SC 1*

Appellate court would interfere with the order of acquittal only when there is perversity of fact and law. The paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent.

Case Laws-

- *State of UP Vs Wasif Haider and others, (2019) 2 SCC 303*
- *Khem Ram Vs. State of Himachal Pradesh, (2018) 1 SCC 202 Bhagwan Jagannath Markad Vs. State of Maharashtra, AIR 2016 SC 4531(para 28)*
- *Sadhu Saran Singh Vs. State of UP, AIR 2016 SC 1160 (para 18)*

- **Special leave to be granted for appeal against acquittal.**
  In case if the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such an appeal to the High Court. This sub-section speaks to 'special leave' as against sub-section (3) relating to other appeals which speaks to 'leave'. Thus, complainant's appeal against an order of acquittal is a category by itself. The complainant could be a private person or a public servant. Sub-Section (6) further provides that if 'special leave' is not granted to the complainant to appeal against an order of acquittal the matter must end there. Neither the District Magistrate nor the State Government can appeal against that order of acquittal. The idea appears to be to accord quietus to the case in such a situation. Thus if in a case instituted on a complaint an order of acquittal is passed, whether the offence be bailable or non-bailable, cognizable or non-cognizable, the complainant can file an application under Section 3778(4) for special leave to appeal against it in the High Court. Section 378(4) places no restriction on the complainant. So far as the State is concerned, as per Section 378 (1)(b), it can in any case, that is even in a case

instituted on a complaint, direct the public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than High Court. But there is, an important inbuilt and categorical restriction on the State's power. It cannot direct the public prosecutor to present an appeal from an order of acquittal passed by a Magistrate in respect of a cognizable and noncognizable offence. In such a case the District Magistrate may under Section 378(1)(a) direct the Public Prosecutor to file an appeal to the Sessions Court. *(Subhash Chand Vs. State (Delhi Administration), AIR 2013 SC 395,)*

- **Powers exercisable by appellate court u/s 378 CrPC against acquittal :**

  The Supreme Court, in the following cases *Sampat Babso Kale Vs. State of Maharashtra, AIR 2019 SC 1852 , Khem Ram Vs. State of Himachal Pradesh, (2018) 1 SCC 202, Satya Narain Yadav vs. Gajanand, 2008 (62) ACC 1006 (SC),Chandrappa vs. State of Karnataka, 2007 (58) ACC 402 (SC)*, has clarified that the following powers can be exercised by the appellate courts while dealing with an appeal u/s 378 CrPC against acquittal of accused :

  1. An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
  2. The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
  3. Various expressions, such as, “substantial and compelling reasons”, “good and sufficient

grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

4. An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirm and strengthened by the Trial Court.
5. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court.
6. If the appellate court decides to interfere with the order of acquittal recorded by the trial court, it must assign reasons for differing with the decision of the trial Court.

- **Appeals from Conviction:**

- High Court orders of conviction issued while exercising original criminal jurisdiction have the right to be appealed to the Supreme Court.
- Conviction orders issued by the Court of Session or Additional Court of Session are appealable to the High Court.
- If the Court of Session or the Additional Court of Session imposes a sentence of more than seven years in prison, the defendant may appeal the decision to the High Court.
- Appeals may be taken to the Court of Session from convictions handed down by the Metropolitan Magistrate, Judicial Magistrate I, or Judicial Magistrate II.
- The court of session hears appeals from anyone who is dissatisfied with the results of a criminal proceeding under Sections 325 and 360 of the Criminal Procedure Code.

➢ **When Appeal lies to division bench**

Appeals from orders of the High Court.- A person convicted on a trial held by the High Court in the exercise of its ordinary criminal jurisdiction can in certain circumstances, appeal under section 411A of the Code; such an appeal has to be heard by a Division Bench of the High Court.

Appeal to be disposed of by Division Bench. — An appeal under the preceding rule from the decision of a single Judge shall be heard and disposed of by a Division Court consisting of at least two Judges, other than the Judge whose decision is appealed from. (Goa state legal services rules.)

➢ **Letter Patent Appeal**

Letter patent appeal (LPA) is an appeal by a petitioner against a decision of a single judge to another bench of the same court. This is an only remedy which is available in court to the petitioner against the decision of a single judge of a high court, otherwise, a remedy would lie with only in the supreme court. So applying for letter patent appeal (LPA) petitioner will save the cost to moving in the Supreme Court. Letter patent appeal (LPA) is an intra-court appeal in high court and inter-court in Supreme Court and both have different rules regarding this LPA. Normally a judgment and order passed under Art 226 of the Constitution is appealable as LPA and judgment and order passed under Art 227 is not appealable under this category.

Supreme Court of India in one case held that appeal to the division bench of the high court is not maintainable in any order or judgment passed by a single bench judge in the criminal matter. Whether that order has been passed by under article 226 of the Indian constitution or under section 482 of criminal procedure code.
The court observed that it is manifest that no appeals lie against the order passed by the single judge in the exercise of criminal jurisdiction. (*Jasbir Singh @ Jassa Etc. v. State Of Punjab & Others , CRIMINAL APPEAL NOS. OF 2021 (Arising out of SLP (Crl.) Nos.9650-9651/2019)*

- **Time barred appeals and condonation of delay :**

  Period of limitation governing preferring of appeals to High Court or other appellate courts against judgment/order of acquittal or conviction/sentence, under different situations, is 90, 60, 30 days. As per Sec. 115 (b) (ii) of the Limitation Act, 1963 period of limitation for preferring an appeal to the court of Sessions Judge is 30 days from the date of sentence or order.

Sec. 5 of the Limitation Act, 1963 applies in relation to question of condonation of delay in preferring criminal appeals. If the refusal to condone delay in preferring the appeal results into grave miscarriage of justice, the appellate court should condone the delay and permit the filing of the accused.

Case laws –

- *Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)*
- *State of Nagaland vs. Lipok AO and others, 2005 (52) ACC 788 (SC)*

- **Re-appreciation of evidences**

Power of appellate court u/s 386 r/w 378 CrPC to appreciate evidence against acquittal:

In an appeal against acquittal, if a possible view has been taken by the lower court, then no interference is required by the appellate court u/s 378 r/w 386 CrPC. But if the view taken by the lower court is not legally sustainable, the appellate court has ample powers to interfere with the order of acquittal.

The High Court observed the scope of re-appreciation of evidence by a higher court in a criminal revision. It was outlined that it had been firmly established as a legal principle that if the lower courts had already determined the facts, there was no need for the third court to re-evaluate the evidence unless it was deemed entirely irrational or absurd. *(Shri Kripal Singh v State & Ors, Criminal Revision Petition No 365 of 2019)*

Case laws-

- *Khem Ram Vs. State of Himachal Pradesh, (2018) 1 SCC 202*
- *State of Karnataka Vs. Suvarnamma, (2015) 1 SCC 323.*

In the case of Minal Das and others vs. State of Tripura, *(Criminal Appeal No. 1994 Of 2009)* the Supreme Court held that after re-appreciating, reconsidering, and reviewing the entire evidence, the High Court shall give cogent and adequate reasons for setting aside the Acquittal.

- **Suspension of sentences**

Section 389 of CrPC provides that when a criminal undergoing a sentence files an appeal in the appellate court, his sentence may be suspended on reasonable justifications and causes. But before the suspension, such appellate courts have to record the reasons in writing, and if the offender is kept in jail, he might be released on bail or on the basis of his own bond.

However, if the offender is punished with life imprisonment, death, or imprisonment that is not less than 10 years, the public prosecutor will be given an opportunity to produce reasons and causes for not releasing the offender while the appeal is pending in the appellate court. He may also file an application for the cancellation of bail in cases where the crime committed was grave and serious in nature.

The Supreme Court has held that in order to suspend the substantive order of sentence under Section 389 of the Criminal Procedure Code, there ought to be something apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. It also added that at the stage of Section 389 CrPC, the Appellant Court ought not to re-appreciate evidence and pick loopholes in the prosecution's case.

The Court observed that for suspending sentence under Section 389 CrPC it is to be seen as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. There should be something apparent or gross on the face of record to arrive at the prima facie satisfaction that the conviction cannot be sustained. It added that the Appellate Court should not re-appreciate the evidence at the Section 389 CrPC. It was also made clear by the Apex Court that the Appellate Court should not re-appreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution as such would not be a correct approach.

Case law-

Omprakash Sahni v. Jai Shankar Chaudhary And Anr Etc. Criminal Appeal Nos. 1331-1332 of 2022.

- ***Appellate Court u/s 389 CrPC can suspend only the execution of the sentence or order and not the conviction or sentence:***

  Overruling its previous two decisions reported in Shri Manni Lal Vs. Parmai Lal, AIR 1971 SC 330 and Vidya Charan Shukla Vs. Purshottam Lal Kaushik, AIR 1981 SC 547, a Constitution Bench of the Supreme Court has, in the case .(*Prabhakaran Vs. P. Jayarajan, AIR 2005 SC 688)* ruled thus: "A person convicted may have filed an appeal. He may also have secured an order suspending execution of the sentence or the order appealed against under Section 389 of the Code of Criminal Procedure, 1973. But that again would be of no consequence. A Court of appeal is empowered under Section 389 CrPC to order that pending an appeal by a convicted person the execution of the sentence or order appealed against be suspended and also, if he is in confinement, that he be released on bail or bond. What is suspended is not the conviction or sentence; it is only the execution of the sentence or order which is suspended. It is suspended and not obliterated. Therefore, an appellate judgement of a date subsequent to the date of nomination or election, as the case may be, and having a bearing on conviction of a candidate or sentence of imprisonment passed on him would not have the effect of wiping out disqualification from a back date if a person consequent upon his conviction for any offence and sentenced to imprisonment for not less than two years was actually and as a fact disqualified from filing nomination and contesting the election on the date of nomination or election as the case may be.

REVISION

In order to eliminate the potential for any miscarriage of justice in circumstances when no right of appeal is available, the Code has established another review mechanism, namely, “revision.” Sections 397, 398, 399, 400, 401, 402, 403, 404 and 405 of CrPC deal with the higher courts’ “revision” powers and the method for using these powers.

- **Revisional jurisdiction to be exercised on question of law** :
  The object of the provisions of revision is to set right a patent defect or an error of jurisdiction or law. “Normally, revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases. Revisional Jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, and the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.
  Case laws-
  - Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 (para 20)
  - *Chandra Babu Vs. State, (2015) 8 SCC 774.*
  - *Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762 (para 18)*

- **Merits of the case not to be discussed when court has no jurisdiction:**
  It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. *(Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083)*

  A court can pass following three types of orders :

  i) final
  ii) intermediate

iii) interlocutory

- **Revision maintainable only in respect of final and intermediate orders:**

  As far as an intermediate order is concerned, court can exercise its revisional jurisdiction since it is not an interlocutory order and the bar of Section 397(2) CrPC is not attracted against an intermediate order.

  (Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620)

- **"Interlocutory Order" & its meaning :**

  In the case of *Amar Nath Vs. State of Maharashtra, AIR 1977 SC 2185 (in para 6),* the meaning of the expression "interlocutory order" has been given by the Hon'ble Supreme Court thus:

  > *"It seems to us that the term "interlocutory order" in section 397(2) of the CrPC has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of*

the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

There is no doubt that in respect of a final order, a court can exercise its revisional jurisdiction i.e. in respect of a final order of acquittal or conviction. An interlocutory order is not revisable. The purpose of Sec. 397(2) of the CrPC is to keep such an order outside the preview of the power of revision so that the enquiry or trial may proceed without delay.

This is not likely to prejudice the aggrieved party for it can always challenge it in due course if the final order goes against it. But it does not follow that if the order is directed against a person who is not a party to the enquiry or trial and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, he cannot apply for its revision even if it is directed against him and adversely affects his rights.

An interlocutory order, though not conclusive (being mere intermediary order) of the main dispute may be conclusive as to the subordinate matter with which it deals. It may thus be conclusive with reference to the stage at which it is made and it may also be conclusive as to a person who is not a party to the enquiry or trial against whom it is directed. The bar u/s 397(2) CrPC against an interlocutory order does not operate when it affects adversely a person who is not a party to the proceedings. In respect of a final order, a court can exercise its revisional jurisdiction i.e. in respect of a final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, court cannot exercise its revisional jurisdiction.

Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620

Parmeshwari Devi vs. State, AIR 1977 SC 403

Mohan Lal Magan Lal Thaker vs. State of Gujarat, AIR 1968 SC 733.

- **Test of interlocutory or final order :**
  It is now well settled that in deciding whether an order challenged is interlocutory or not as per Section 397(2) CrPC, the sole test is not whether such order was passed during the interim stage. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceeding, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) CrPC. An order which substantially affects the rights of the accused or decides certain rights of the parties would not be an interlocutory order. If the order passed in any petition would result in culminating the proceeding, the order would not be "interlocutory order" in nature as envisaged in Section 397(2) CrPC.
  Case laws-
  - *K.K. Patel vs. State of Gujarat, (2000) 6 SCC 195*
  - *Rajendra Kumar Sita Ram Pande vs. Uttam, AIR 1999 SC 1028*
  - *V.C. Shukla vs. State through CBI, 1980 SCC (Cri) 695*
  - *Madhu Limaye vs. State of Maharashtra, AIR 1978 SC 47*
  - *Amar Nath vs. State of Haryana, AIR 1977 SC 2185*

The term “Interlocutory order” is used in a restricted sense. It denotes an order of purely interim or temporary nature. It is not always converse of the term “final order”. An order which overrides important rights and liabilities cannot be termed as interlocutory.
(Amar Nath vs. State of Haryana, AIR 1977 SC 2185.)

- **Difference between interlocutory and intermediary orders**
  An interlocutory order merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment.(*Kanupriya v Ashutosh Aggarwal, Appeal from Order No. 99 of 2017*)

- **Power by High Court u/s 482 CrPC cannot be exercised in respect of interlocutory orders as the bar of Section 397(2) CrPC applies to Section 482 CrPC also :**
  When Section 397(2) CrPC prohibits interference in respect of interlocutory orders, Section 482 CrPC cannot be availed of to achieve the same objective. To set aside an interlocutory order, prohibition in Section 397 CrPC will govern Section 482 CrPC. The power under Section 482 of the CrPC is to be exercised only in respect of interlocutory orders to give effect to an order passed under the CrPC or to prevent abuse of process of any Court or otherwise to serve the ends of justice. Such power has to be exercised only in the rarest of rare cases and not otherwise. In such cases, resort to Article 226 and 227 of Constitution would be

permissible perhaps only in most extraordinary cases.*(Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620)*

- **SLP before the Supreme Court under Article 136 of the Constitution can be filed against interlocutory order :** The bar of Section 397(2) CrPC to entertain revision does not prohibit the party from approaching the Supreme Court under Article 136 of Constitution. Therefore, all that has happened is that forum for ventilating grievance of the appellants has shifted from the High Court to the Supreme Court. Mere fact that the Supreme Court could dismiss the petition filed by the appellants under Article 136 of the Constitution without giving reasons does not necessarily lead to conclusion that the reasons will not be given or that some equitable order will not be passed. Thus, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) CrPC that cannot be circumvented by resort to Section 482 CrPC. *(Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620)*

- **Revision not a right :**
  Sections 397 to 403 CrPC do not confer a right on a litigant to file revision but the revisional power is only discretionary with the court to see that justice is done in accordance with the recognized principles of criminal jurisprudence.
  Malti vs. State of U.P, 2000 CrLJ 4170 (All), Iqram vs. State of U.P. 1988(2) crimes 414(All.)
  Revision against an order passed by Magistrate can be filed directly before the High Court. *(CBI Vs. State of Gujarat, AIR SC 2522)*

- **Appreciation of evidence & extent of powers of revisional court :**

  While the appellate jurisdiction is co-extensive with the original court's jurisdiction as appreciation and re-appreciation of evidence is concerned, the revisional court has simply to confine to the legality and propriety of the findings and as to whether the subordinate court acted within its jurisdiction. A revisional court has no jurisdiction to set aside the findings of facts recorded by the Magistrate and impose and substitute its own findings. Sections 397 to 401 CrPC confer only limited power on revisional court to the extent of satisfying the legality, propriety or regularity of the proceedings or orders of the lower court and not to act like appellate court for other purposes including the recording of new findings of fact on fresh appraisal of evidence.

  Case Laws-

  - *Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 (paras 12 & 18).*
  - *Johar Vs. Mangal Prasad, AIR 2008 SC 1165*
  - *State farm Corpn. of India Ltd. vs. Nijjer Agro Foods Ltd., (2005) 12 SCC 502*
  - *State of Maharashtra vs. Jag Mohan Singh Kuldip Singh, 2004 (50) ACC 889 (SC)*

  - **Findings of facts recorded by lower court not to be altered by revisional court merely because another view on the same evidence is possible :**
    Where in a case of maintenance filed by wife u/s 125 CrPC, the High Court had altered the findings of facts recorded by the Magistrate in its revisional powers u/s 401 CrPC even when the said findings of facts recorded by the

Magistrate were neither perverse nor erroneous but based on proper appreciation of evidence on record, setting aside the order of the High Court, the Hon'ble Supreme Court has ruled that the High Court in its revisional powers could not have interfered with the findings of facts recorded by the lower court only because the High Court could have arrived at a different or another conclusion.

Case laws-

- *State of T.N. Vs. Mariya Anton Vijay, (2015) 9 SCC 294 (paras 65 & 66) ,*
- *Shamima Farooqui Vs. Shahid Khan, (2015) 5 SCC 705.*

Revisional court can interfere with the findings of fact of the lower court only when the same is perverse and not merely when another view is also possible. *(Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others, (2015) 3 SCC 123.)*

The finding of fact recorded by a court can be held to be perverse if it has been arrived at by ignoring or excluding the relevant material or by taking into consideration irrelevant or inadmissible material. The finding may also be said to be perverse if it is against the weight of evidence or if the finding so outrageously defies the logic as to suffer from the vice of irrationality. *(Anwar Ali Vs State of Himachal Pradesh, (2020) 10 SCC)*

- **High Court has power in revision u/s 401 CrPC to alter finding of acquittal into that of conviction :**

High Court has power in revision u/s 401(1) & (3) and u/s 386(a) CrPC to alter finding of acquittal into that of conviction. (*Ganesha Vs. Sharanappa & Another, (2014) 1 SCC 87.)*

- **Time-barred Revisions & Condonation of Delay**: According to Article 131 of the Limitation Act, 1963, the limitation period for filing revision u/s. 397 CrPC is 90 days from the date of order under challenge. Revisional court can condone the delay u/s 5 of the Limitation Act, 1963 if the delay is satisfactorily explained by the proposed revisionist. If the revisionist was not having knowledge of the order then the limitation period of 90 days to prefer revision would be computed from the date of knowledge of the order. In the cases, noted below, it has been held that a criminal revision cannot be dismissed on a technical ground like limitation otherwise if the order passed by the lower court is otherwise illegal, that illegality will perpetuate and survive if the power of revision is not exercised by the revisional court for the technical reasons like limitation. The revisional court should apply liberal approach while considering the question of limitation in regard to a time barred criminal revision.

  Case Laws-

  - *Shilpa vs. Madhukar & others, 2001 (1) JIC 588 (SC)*
  - *State of U.P. vs. Gauri Shanker, 1992 ALJ 606 (All—D.B.)*
  - *Paras Nath vs. State of U.P., 1982 ALJ 392 (All)*
  - *Municipal Corporation of Delhi vs. Girdharilal Sapuru, AIR 1981 SC 1169*

Transfer of Criminal Cases

Transfer of a case for trial is often carried out with a view to ensure a fair trial. If an accused has reasonable cause to believe that he may not receive a fair trial at the hands of a particular judge of Magistrate he should have the right to have his case transferred to another court. The Code of Criminal Procedure provides for different aspect of transfer of criminal case.

The court in *Nahar Singh Yadav v. Union of India (2011) 1 SCC 307,* laid down broad factors to determine the transfer like, the state machinery and prosecution "working hand in glove with the accused", probability of physical harm to the witness or the complainant, inconvenience burdened by the parties, communally surcharged atmosphere, and the involvement of hostile individuals in the case.

It is pertinent to mention that the transfer process itself can cause a lot of inconvenience to witnesses, victim, accused and the state. All of them would on transfer have to travel to the place where transfer is ordered when required, costing time and money for all the interested parties. The state from which the transfer is made has to bear the cost for all such expenses along with the fee of special prosecutor appointed in the transferee court. The court bears in mind the convenience of parties while transferring the matter to another place as it did in a case by transferring the matter to a place where the majority of the witnesses resided.

1. Power of Supreme Court to Transfer cases and Appeals

The section 406 of the CrPC is the principle provision which empowers the Supreme Court to transfer a case from one trial court to another falling under jurisdiction of a different high court and also a case from one high court to another high court.

The latter power is also provided under article 139A (2) of the Indian Constitution through which the Supreme Court can transfer case from one high court to another.

Section 406 specifies that the power to transfer is to be exercised when it is ‘expedient for the ends of justice’. This phrase provides very wide power to the Supreme Court on the basis of which the court can transfer a case. The most important factors which are considered while transferring the matter are the undermining public confidence in the trial6 and to prevent miscarriage of justice.

a) Wrongs by police

The Hashimpura massacre occurred in the year 1987 in Hashimpura, Uttar Pradesh which lead to death of 42 Muslim men. The case was originally tried by the Ghaziabad District Court but there was delay in initiation of the trial and further the trial process may not have seemed fair as higher officers of the same force could have been implicated in the case. The Supreme Court in 2002 ordered the case of Hashimpura to be transferred to Tis Hazari Court in Delhi the interest of justice considering the various wrongs that had happened in the trial process. The High Court of Delhi in 2017 convicted 16 Provincial Armed Constabulary (PAC) personals, awarding them life sentences.

The second case is regarding the fake encounter of Sohrabuddin and his wife which occurred in the State of Gujarat in 2005 implicating several senior police officers and politicians of the then ruling state government. CBI petitioned the Supreme Court to transfer the case. In this case the charge sheet filed by the police and the subsequent allocation of case to session's judge were done in a very hurried manner. On the petition of CBI, Supreme Court in 2012 transferred the case to a special CBI court in Mumbai stating that the transfer was being made to save the trial from undue stress and to avoid any possible misgivings in the minds of ordinary people. The court stated in clear terms that the decision was not a reflection on the competence or impartiality of state judiciary.

b) Corruption and impropriety

In Jayalalitha Disproportionate Assets case along with Jayalalitha, two others were charged under section 120-B of IPC and section 13(2) and 13(1)(e) of Prevention of Corruption Act, 1988 for accumulation of wealth disproportionate to their actual source of income. In the transfer petition it was mentioned that certain anomalies have emerged in the case. Several of the witnesses were changing their statements and the public prosecutor was not undertaking any effort to inquire if the witnesses were being pressurized. All of this was happening in the light of the change of the government as the party headed by the accused had come to power in the year 2001. This case was transferred to Bangalore by the Supreme Court in 2013 after which the accused were convicted by trial court and also the Supreme Court in 2017.

In the Ghaziabad Provident Fund scam24, the CBI had charge sheeted several retired judges of High Court of Allahabad and Ghaziabad District Court. The case was being dealt by the Ghaziabad District Court itself. All these persons were previously working in the same court. The trial judge of Ghaziabad District Court dealing with this case had in past associated with the accused judges but the Supreme Court refused to transfer this matter to a court in Delhi on this ground.

c) Miscellaneous cases

In Kathua rape case, an 8 year old girl was raped and murdered. Later in the charge sheet filed by the police it was stated that the motive of the rape was to dislodge the Muslim Bakarwal community from the area. The case was transferred to Pathankot Session Court in Punjab and was ordered to be fast tracked. The order was made in May 2018, and ultimately six of the seven accused were convicted for the offence. The decision of the Supreme Court was necessary to provide effective prosecution free from public pressure which would not have been possible in the same district as even the Bar association was opposing the trial of the accused.

In another case in 2004 Jayendra Saraswati Swamigal filed transfer petition in the Supreme Court citing that the Tamil Nadu state government was creating hurdles and preventing him from ensuring effective defense in a case where he was arrested. Many of the journalists and leaders were arrested for opposing the arrest of the accused in this case. The case was transferred to Pondicherry by Supreme Court accepting the argument of interference of the state machinery in prosecution of the case. Finally in the year 2013 Jayendra Saraswati was acquitted of all the charges in 2013 by the Pondicherry trial court.

An important consideration which the court can keep in mind while deciding the transfer of a case is the power relationship shared by the state with the accused as well as by the witnesses/victim with the accused. Then the court must ascertain whether the relationship between these two which can be adverse or beneficial, leads to apprehension of an unfair trial because of a possibility of influence. And if it does the court must consider transferring the matter to another state. Except that the court may take further actions like witness protection, ordering an independent probe or any other such measures for ensuring public confidence in the trial and non-partial decision making.

Power of High Court to Transfer Cases and Appeal

At whose instance the power is to be exercised.-While considering the transfer of any case or appeal, the High Court may act a) on the report of the lower court; or b) on the application of a party interested; or c) on its own initiative. However, no application shall lie to the High Court for the transfer of the case from one criminal court to another criminal court in the same Sessions Division, unless an application for such transfer has been made to the Sessions Judge and rejected by him [S. 407(2)]. Bandaru Shreedhar Reddy vs. State of A.P.

When such an application is made by an accused person, the High Court may direct him to execute a bond, with or without surieties, for the payment of any compensation which the High Court may award to any person opposing the transfer application, under sub-section 7 of Section 407.

Circumstances in which a transfer may be ordered.-A case or an appeal may be transferred, if the High Court is of the opinion that

i. a fair and impartial enquiry or trial cannot be had in any criminal court subordinate thereto;
ii. some question of law of unusual difficulty is likely to arise; or

iii. an order under this section 407 is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice.

The above provision is not exhaustive. It has been held that apart from the susceptibilities of the accused if circumstances exist or events happened which are calculated to create in the mind of the accused a reasonable apprehension that he will not be fairly treated at his trial, the transfer of the case would be justified. The Supreme Court allowed transfer petition of a case remanded by the High Court to a trial judge, whose earlier strongly worded order could create a lurking suspicion in the mind of the complainant leaving him with a brooding sense of having suffered injustice not because he had no case, but because the Presiding Officer had a preconceived notion about it. *Kanaklata vs. State(NCT of Delhi*). This, however, does not mean that transfer can be ordered on the ground that an advocate of the applicant's choice is not available at the trial court. Even in a case when this Sessions Judge who was trying the case was transferred to another district at the stage of the accused's statement under Section 313 Criminal Procedure Code, 1973, a petition moved under Section 407 transfer the case to the new destination to which the judge was transferred was rejected by the Karnataka High Court."

Stay of proceeding before a subordinate court-Where the application is for the transfer of a case or appeal from any subordinate court, the High Court may, on being satisfied that it is necessary to do so in the interest of justice, order that, pending the disposal of the application, the proceedings in the subordinate court shall be stayed, on such terms as the High

Court may think fit to impose. However, such a stay is not to affect the subordinate court's power of remand under Section 309.

Power of Sessions Court to Transfer Cases and Appeal [S. 408(1) & (2)]

On the report of the lower court, or on the application of a party interested, or on his own initiative, a Sessions Judge, if he considers expedient for the ends of justice to do so, may order that any particular case be transferred from one criminal court to another criminal court in his Sessions Division. However, he cannot transfer a case from the SDM's court despite the latter being a criminal court under Section 6 of the Code. This power vests with the District Magistrate. A Sessions Judge also cannot assume jurisdiction in a case by way transfer if it cannot on its own assume jurisdiction [*Suresh Chandra Bahri vs. State of Bihar 1995 SCC(Cri)60.*

No guidelines have been provided to indicate the circumstances in which it would be expedient for the ends of justice to transfer a case from one criminal court to another criminal court in the same Sessions Division. However, it has been held in a number of cases that the wide powers of transfer given to the Sessions Judge should be exercised judicially and cautiously.

The Supreme Court has considered the exercise of power of Sessions Judge to transfer cases under Section 408 and interference therewith under Article 227 and warned to be guarded against forum shopping. It observed that the apprehension of not getting a fair and impartial trial has to be real and reasonable *[Usmangani Adambhai Vahora vs. State of Gajarat (2016) 3 SCC 370]*

Quashing of Proceeding

The judgments on quashing of FIR/charge-sheet by the Supreme Court as well as numerous High Courts, have created a conundrum for the reason that there seems to be no uniformity and consensus in the findings of the courts on it.

The landmark judgment for quashment of FIR/charge-sheet was of the Supreme Court in State of Haryana v. Bhajan Lal 1992 SCC (Cri) 426, para 8.1 , wherein the Court had succinctly laid down the categories of cases/illustrations for quashing of FIR/charge-sheet by way of exercising extraordinary powers under Article 2263 of the Constitution of India or inherent powers under Section 4824 of the Criminal Procedure Code, 1973, either to prevent the abuse of process of court or otherwise to secure the ends of justice.

1. Where the allegations made in the FIR, even if taken at face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the FIR and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1)of the Code except under an order of a Magistrate within the purview ofSection 155(2) of the Code.
3. Where the allegations made in the FIR and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer, unless a Magistrate has issued an order for the same, as contemplated under Section 155(2)of the Code.
5. Where the allegations made in the FIR are absurd to the extent that no prudent man can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions f the Code or the concerned Act, under which a criminal proceeding is instituted, with regard to the institution and continuance of the proceedings and / or where there is a specific provision inthe Codeor the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. VII. Where a criminal proceeding is manifestly attended with mala fide intention and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and / or personal grudge.
8. In the case of *R P Kapur v. State of Punjab 1960 AIR 862,* the Supreme Court of India held that criminal proceedings against a person can be quashed if the case being dealt with belongs to any one of the following three classes of cases:

I. Where there is a legal bar against institution or continuance of the criminal proceedings.

II. Where the allegations in the FIR do not constitute an offence, even if taken at face value and in their entirety.

III. Where the allegations made constitute an offence, but there is no evidence which can prove them.

Quashing of criminal proceedings in matrimonial cases

The Supreme Court of India has, many a times, held that the proceedings being pursued under Section 498 - A of IPC ought to be quashed if the chances of conviction are very bleak or the case has been filed with ulterior motives.

In *B S Joshi v. State of Haryana 2003 (4) SCC 675,* the Supreme Court justified the exercise of powers under Section 482 CrPC to quash the proceedings in matrimonial cases to secure the ends of justice in view of the special facts and circumstances of the case even where the offences alleged are non- compoundable

Some Other Important Cases

In the case of M. Narayandas vs. State of Karnataka 2003 11 SCC 251 held as follow:-

It is settled law that the power to quash must be exercised sparingly and with circumspection. It must be exercised in rarest of rare cases. It also settled law that the court would not be justified in embarking upon an enquiry as to the reliability of genuineness or otherwise of the allegations made in the FIR. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

Prashant Bharti v. State of NCT of Delhi (2013) 9 SCC 293:

In order to determine the veracity of a prayer for quashing the criminal proceedings raised by an accused under Section 482 of the CrPC, the following questions have to be analyzed by the High Court.

a. Whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

b. Whether the material relied upon by the accused is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

c. Whether the material relied upon by the accused, has not been refuted by the prosecution / complainant; and / or the material is such, that it cannot be justifiably refuted by the prosecution / complainant?

d. Whether proceeding with the trial would result in an abuse of process of the court and hence, would not serve the ends of justice?

Quashing of interlocutory orders

When Section 397(2) CrPC prohibits interference in respect of interlocutory orders, Section 482 CrPC cannot be availed of to achieve the same objective. To set aside an interlocutory order, prohibition in Section 397 CrPC will govern Section 482 CrPC. The power under Section 482 of the CrPC is to be exercised only in respect of interlocutory orders to give effect to an order passed under the CrPC or to prevent abuse of process of any Court or otherwise to serve the ends of justice. Such power has to be exercised only in the rarest of rare cases and not otherwise. In such cases, resort to Article 226 and 227 of Constitution would be permissible perhaps only in most extraordinary cases.(Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620)