

Review Procedures under CrPC: interesting facts you must know about

By **Diva Rai** - December 20, 2019



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This article is written by [Shivangi Tiwari](#), a second-year student pursuing B.A. LL.B. from Hidayatullah National Law University, Raipur. This is an exhaustive article dealing with review Procedures under Cr.P.C.

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Introduction

The processes involved in the criminal justice system can have a drastic impact on the lives of people involved in it, especially the rights which are guaranteed to people under the constitution of India like Right to Life and Personal Liberty. It is a well known saying that "to err is human" and judiciary being one of the institutions created by humans is prone to committing errors. Therefore, in order to prevent the miscarriage of justice which defeats the very purpose of the judicial system the need for the creation of some system to be created to ensure that justice is fairly delivered is imperative and where there is a miscarriage of justice, some rectifying mechanism should come into play. Keeping in view this need in order to prevent the fallibility of the judicial system the Code of Criminal Procedure, 1973 has devised various provisions. [Section 372](#) to [Section 394](#) of the Code of Criminal Procedure deals with the provisions related to appeals.

However, in exceptional cases no right to appeal lies with the person. In order to prevent the situation in which the aggrieved party does not remain remedy less, The legislators have incorporated the concept of review under the Code of Criminal Procedure, which is called "Revision" which has been provided under the Code to uphold the ultimate goal of the entire judicial system which is deliverance of justice. [Section 397](#) to [Section 405](#) of the Code include the provisions with respect to the revisionary jurisdiction granted to the higher courts and the procedure by which the higher courts exercise this jurisdiction guaranteed to it. The powers granted to the high courts are very wide in nature and are completely discretionary in nature.

In practicality, the provision of an appeal is a legal right conferred to the parties, revisionary power conferred to the criminal courts is completely discretionary in nature and therefore no party can claim it as a matter of right. In criminal cases, at least one appeal is granted to an accused by the legislature, whereas there is no such right in instances of revision. The courts have time and again discussed the difference between appeal and revision.

In *Hari Shankar vs Rao Ghari Chowdhury*, the Supreme Court held that there is a difference between appeal and revision. The right of appeal also consists of right of rehearing as well unless the statute conferring the right of appeal limits the rehearing in some way. The power to hear a revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law.

Object and scope

Chapter XXX of the Code of Criminal Procedure deals with two important jurisdictions, which are:

- Revision;
- Reference.

Under [Section 395](#) reference jurisdiction can be invoked by any court of Metropolitan Magistrate. The Code makes it necessary that the reference jurisdiction can be made only on the question of law which may include the validity of any Act, provision which may arise during the hearing of any case.

The revisional jurisdiction on the other hand under [Section 397](#) can be invoked either by:

- High Court; or
- Sessions judge.

Under revisional jurisdiction, any higher court can call for the record of the case from the court subordinate to it. According to [Section 398](#) of the Code, the objective of revisional jurisdiction is to call for further enquiry in cases where the court finds that justice has not been meted out to the parties fairly. According to [Section 401](#), in case of any proceedings of record by the High Court itself or otherwise comes to its knowledge, the High Court in its discretion has the authority to exercise any of the powers which are conferred upon the appellate court under [Section 386](#), [Section 389](#), [Section 390](#) and [Section 391](#) or the powers conferred on Sessions court under [Section 307](#).

The authority which the High Courts have over the other Criminal courts in India is guaranteed to it not only by the Code of Criminal Procedure but also by the Constitution of India. Besides the appellate jurisdiction, the authority possessed by the High Courts over the other courts is the power of superintendence guaranteed to the High Courts by [Article 227](#) of the Indian Constitution.

According to subsection 1 of Section 395, the reference jurisdiction is held only by the Court of sessions or Metropolitan Magistrate. A judicial Magistrate has the authority of making reference only under subsection 2 of Section 395.

Reference of the high court

In its literal sense, the term 'Reference' means to put forward something in front of any person in order to obtain his opinion on the thing so forwarded to him. Section 395 of the Code of Criminal Procedure confers the right to the subordinate criminal courts to refer cases to the High Court. The Section provides that the subordinate courts may approach the High Court of the respective states where they are located and may refer a case to the High Court so approached in order to obtain its opinion in cases where the subordinate courts are satisfied that the particular case requires a judicial interpretation by the higher judiciary. The right of the subordinate courts can be exercised in two situations, which are as follows:

- When the validity of the Act, ordinance or any regulation is in question and the court thinks that the validity of such Act, ordinance or any regulation is doubtful;
- When in any case there is a question of law involved which the court thinks requires the interpretation of the High Court.

Prerequisites for reference under Section 395

- **The case should be pending before the court:** It is important that the case in which the validity of any law is in question should not be decided and must remain pending before any court of law. No specific stage of proceeding has been expressly mentioned under the provision and therefore as a general rule, the trial court can refer to the High Court at any stage of the proceedings whenever it deems fit. However, where the trial court has already decided a case then it can not refer the case to the High Court and only parties to the trial can approach the higher courts by way of revision.
- **The case should necessarily involve a question of law:** Normally the question before a trial court is whether the accused in the trial is guilty of the offence of which he is charged with. However, during the proceedings, the question of the validity of any law may arise before the court which the court could take up to the High Court for reference. For example in *Mohammad Altaf Mohand And Anr. vs C.B.I And Ors.*, the validity of Armed Forces (Special Powers) Act, 1958 was challenged which gave the power of search and seizure to the military officers and in the present case the accused were the military officers who were charged with rape and murder and it was contended on behalf of the petitioners that the said Act gave unnecessary powers to the military officers.
- **The law which is in question must be in the form of Act, ordinance or regulation:** The provision does not specifically mandate that the law should essentially be a primary legislation and it can even be an ordinance or a delegated legislation which can be forwarded to the High Court for its reference. In *Dashrath Rupsingh Rathod v. State of Maharashtra & Anr*, the validity of Negotiable Instruments (Amendment) Act, 2015 was in question and the validity provided by the ordinance to the courts was challenged.
- **The courts must believe that the law in question is invalid:** The court which is hearing the matter should have a sufficient reason to believe that the law which is in question is invalid because of any reason which may be a violation of any of the provisions of the Constitution or it is arbitrary and violates the principles of natural justice.

Reference to high court and post reference procedure

Reference to High Court

- Provisions with respect to reference which can be made by the courts subordinate to High Courts are contained under Section 395(1) of the Code of Criminal Procedure and it empowers the courts subordinate to High Courts to refer any case pending before it to the higher courts which involves a substantial question of law regarding the validity of the Act, Ordinance, regulation or any provision which in the opinion of the court should be inoperative. The word 'regulation' is used in the sense in which the General Clauses Act of 1897 defines it;
- Subsection 2 of Section 395 provides that in any case before the subordinate court does not fall under subsection 1 of Section 395, then the subordinate courts shall refer to the judgements delivered by the higher courts earlier. The court makes a reference under subsection 2 of section 395;
- Subsection 3 of Section 395 provides that any court which makes a reference under subsection 1 and 2 of the Section shall in the meantime either commit the accused to jail, release him on bail and may call him when the court holding the proceedings may require. In *Mahesh Chand v. State of Rajasthan*, the court subordinate to High Court made reference to the High Court about a bail application which was by the time the reference was made was already disposed of and therefore, the High Court refused to entertain declined to make any reference since there was no matter pending before the court and therefore, no reference could be made for the matter which has already been disposed of.

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Post reference procedure

[Section 396](#) of the Code of Criminal Procedure talks about the post reference procedure i.e., the procedure which has to be followed by the subordinate court which referred any case to the High Court which involves a substantial question of law regarding the validity of the Act, Ordinance, regulation or any provision which in the opinion of the court should be inoperative because of the reason of it is invalid for certain reasons. The Section provides that, the High Court to which any case was referred to when passes the decision or the order as it deems fit then the copy of such decision or order passed by the High

Court should be sent to the court which has referred to the High Court and the subordinate court after receiving the copy of the decision or judgement should dispose the matter in accordance with it.

Revisional jurisdiction

Dictionary meaning of "revision" is the act of revising or reviewing something in order to locate and rectify the mistakes if any, present in it. [Section 399](#) and [Section 401](#) of the Code of Criminal Procedure confers the revisionary jurisdiction to Sessions Court and High Court respectively. [Section 399](#) of the Code states that the revisional jurisdiction is the same as that with the High Court under [Section 401](#). Revisionary jurisdiction is the power of the higher courts to call for records from the lower courts of the cases which are already decided by the lower courts. The objective of revisionary jurisdiction are as follows:

- Higher courts can keep a check on whether the legal principles, procedures and jurisdiction are duly complied with or not by the subordinate court.
- To keep the lower court within the bounds of their authority and make them work in accordance with the rule of law.

Essentials for the exercise of revisional jurisdiction

The essentials required to exercise the revisional jurisdiction are as follows:

- **Calling for records of the case:** The most basic ingredient for the exercise of revisional jurisdiction is that the court should call for records of the cases which are already decided by any Court subordinate to it. The record of any case consists of the FIR, statements made by the witnesses under [Section 161](#) of the Code of Criminal Procedure, any confessions recorded under [Section 164](#) of the Code of Criminal Procedure, the sworn evidence given by the witness before the court, any other document which is brought to record and finally he certified copy of the judgement of the court over the judgement of which the revisionary jurisdiction is exercised;
- **Unsatisfaction of parties on the court's judgement:** Just like appeal, the revision of the judgement can be brought by either of the parties to the suit which is aggrieved by the judgement and the findings of the court. However, the court exercising the revisional jurisdiction cannot revise the judgement on its merit and only revise the procedural aspect of the judgement.

The statement made to a metropolitan magistrate

Generally, the statements made in the court of law are recorded under Section 161 and 162 of the Code of Criminal Procedure. Section 161 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') titled "Examination of witnesses by police" provides for an oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 Cr.P.C can be used at any trial are indicated in Section 162 Cr.P.C. The confessions of the accused and the witnesses are recorded under Section 164 of the Code. Subsection 1 of Section 164 of

the Code mandates that a metropolitan magistrate can record the confession and statements made to him by the accused or witness in the course of the investigation. It is also provided that it is not essential that the magistrate who records the confession and statements has jurisdiction in the case. The judicial magistrate also has the authority to administer an oath to the person who makes such statements. Under Section 164(5) of the Code of Criminal Procedure can record the statements other than the confessions which in his opinion are appropriate to the circumstances of the case in question.

The term 'Statement' has nowhere been defined in the Code of Criminal Procedure. But the term 'statement' under the Code means those statements which are written by the witness himself or the statements made by the witness which are reduced to writing by any person other than the witness himself. The term 'statement' recorded under Section 164 of the Code refers to the previous statement made by the witness or the statements of the accused which is not a confession. The purpose of inclusion of the provision of recording the statement under Section 164 is two-fold, which are as follows:

- To prevent the witnesses from changing their statements subsequently;
- To overcome the immunity from prosecution with regard to the information furnished by the witnesses under Section 162 of the Code.

Power to order inquiry

[Section 397](#) of the Code of Criminal Procedure authorizes the High Court or the Sessions judge to direct the Chief Judicial Magistrate to himself make an inquiry or direct any magistrate subordinate to him to make further inquiry into any complaint which has been dismissed under [Section 203](#)(if after the consideration of the statements on oath of the complainant and the witnesses the magistrate is of the opinion that the inquiry which was carried on under Section 202 of CrPC reveal that there is no sufficient ground for proceeding, he may dismiss the proceedings) or [Section 204\(4\)](#)(when there is a provision of payment of any process-fee under any law in force then the failure to pay such fee may result in the dismissal of complaint by the Magistrate) or any case in which the person accused of an offence has been discharged or acquitted. The Section further provides that the power conferred to the court under [Section 397](#) of the Code can not be exercised by the courts to direct any person mentioned under the Section to inquire into any case of the person where the case has been discharged unless the person was provided with the opportunity of proving why the case should not be discharged.

Sessions judge's powers of revision

[Section 399](#) of Criminal Procedure Code confers revisionary jurisdiction upon the Session's judge. The Section makes the revisional jurisdiction of High Court coextensive with that of Sessions Court.

- Subsection 1 of Section 399 states that in cases where the record of proceedings have been called for by the Sessions judge. The Sessions Judge has similar powers to those exercised by the High Court which is conferred to it by Section 401 of the Code;
- Subsection 2 of Section 399 states that the provisions of sub-section 2, 3, 4 and 5 of [Section 401](#) shall apply in cases where revision proceedings have commenced before the sessions judge and the references under the subsection which are made to the High Court shall be construed as references made to the Sessions judge;
- Subsection 3 of Section 399 limits the opportunity of an aggrieved party from going to the courts for filing revision petition by providing that where the revisional proceedings were going on before the Sessions Judge and the judgement has been delivered by him. Then the judgement delivered by the Judge shall be final and the person who filed the revision petition will lose his right to file a similar petition before the High Court or any other court in the country.

Powers of revision of additional sessions judge

[Section 400](#) of the Code of Criminal Procedure provides that an additional sessions judge has revisional powers similar to those possessed by the sessions judge which are mentioned under the Code in the cases which may be transferred to him by the sessions judge under any general or special order of the sessions judge.

Statement of metropolitan judge

According to Section 397 of the Code of Criminal Procedure, when the record of any case is called for by the High Court from the metropolitan judge, the metropolitan judge should submit along with the record a statement stating the grounds on which the impugned order or decision was taken. The higher court shall take the reason for the decision so provided by the statement submitted by the metropolitan judge into consideration while delivering the judgement of setting aside or overruling the decision.

High courts powers of revision

The right to appeal, according to the Code of Criminal Procedure is confined only to specific cases which have been mentioned under the Code. Even in those specified cases, only one appeal is permissible by the Code and the review of the decision given by the appellate court can in ordinary circumstances not be subjected to further appeal in the higher court. The Code in order to prevent the miscarriage of justice has devised the procedure of Revision. The provisions regarding the power of review with the higher courts and the procedure to regulate the power are contained under Section 397 to [Section 405](#) of the Code of Criminal Procedure. The power of revision with the higher judiciary is very wide and is purely discretionary. Therefore no party can claim it as a matter of right to be heard before the court with revisional jurisdiction.

The revisional powers conferred by the Code are wide enough but the same cannot be exercised in exceptional circumstances. The exceptional circumstances are as follows:

- In cases where an appeal can lie but there is no appeal brought by the party. No revisional proceedings shall be entertained on behalf of the person who could have brought in a petition for appeal but did not do so;
- When interlocutory orders are passed in any appeal, enquiry or trial;
- The court which is exercising its revisional jurisdiction does not possess the power to convert a decision of acquittal into a decision of conviction;
- A person is entitled to file only one application for revision in either court of session or High court and once a person has filed an application for revision he can not file any other application in any court of law.

Section 397 to [Section 401](#) of the Code of Criminal Procedure confers revisional jurisdiction upon the High court.

Power exercised by the High Court

Section 401 confers the revisionary powers to the High Courts in the territory of India. The revisionary power is the procedural mechanism to correct the errors committed in the dispensation of justice by the courts. The revisionary power of High Courts is very wide and can be exercised in exceptional cases where there is a complete miscarriage of justice.

Treatment of application of revision as a petition of appeal

Section 401 of the Code empowers the High courts to exercise the powers of an appellate court. The appellate jurisdiction of High Courts can be exercised only in exceptional cases in order to prevent the miscarriage of justice in exceptional circumstances. Section 386 of the Code of Criminal Procedure guarantees appellate power to the High Courts. In exercise of Appellate power under Section 386 Cr.P.C. the High Court has full power to reverse an order of acquittal and if the accused are found guilty they can be sentenced according to law. Section 386 of the Code makes it clear that the purpose of revisional jurisdiction is to satisfy the person that he is meted out with justice as to the legality, correctness and propriety of findings, sentence, order or judgement delivered by the court against which he files a revision petition before the higher court.

Power of high court to withdraw or transfer revision cases

In case of a joint trial, if one of the accused moves to the High Court while the other accused moves to the sessions court for filing the revision petition then the High Court will have the upper hand in deciding as to which court should entertain the matter. The court takes this decision keeping in mind the general convenience of the parties and also the gravity of the case which comes to the court. If the High Court decides to let the sessions judge decide the matter and the sessions judge so disposes of the court then the party which moved to the court with the revision petition would in accordance with the provisions of Section 397(3) of the Code loses the right to move to another court for filing the petition for the revision of the case in any other court.

High court's order to be certified to lower court

According to [Section 405](#) of the Code of Criminal Procedure, when a High Court or sessions judge decides on any revision petition. Then it has to certify the judgement or order delivered under the case, in accordance with the procedure mentioned under [Section 388](#) of the Code, to the court which delivered the judgement which was appealed against.

Difference between reference and revision

The table below tries to explain the difference and the different nuances of reference and revision mentioned under Code of Criminal Procedure concisely:

Reference	Revision
Reference is covered under Section 395 and Section 396 of Chapter XXX of the Code of Criminal Procedure.	Revision is covered under Section 397 to Section 402 of the Code of Criminal Procedure.
Reference can lie on the question of law in the higher courts.	Revision may lie either in lower or higher courts on the matters which are already decided by the courts.
Reference to the matter can be made only when the matter is still pending or under consideration of the court.	Revision can be made only after the final judgement, order or decree has been passed by the court.
The purpose of making reference is to consult the higher judiciary on laws, regulations or ordinance which are considered by the court to be invalid on any reasonable ground.	The purpose of revision is to revise, review, alter and amend any errors made by the lower courts.
Reference is initiated by lower courts to higher courts.	Revision can be initiated either by the trial court or any higher court.

Conclusion

The process of appeal gives a person the right of appearing before the court and getting any factual or legal error ratified by the court in order to attain justice. However, appeals against only those judgments, orders, or sentences passed by any criminal court can be brought before the court which has been specifically mentioned under the statutes. Thus, the right to appeal can only be exercised within the bounds of the Code of Criminal Procedure or any other law in force and hence, this is discretionary upon the court which has been approached and can not be claimed as a matter of right. In certain cases no

appeal is not allowed at all, in fact, the judgment, or order, or sentence delivered by the criminal court will attain finality.

The revisionary jurisdiction guaranteed to the High Courts is quite extensive and the High Courts are given wide powers in this respect. It would not be superlative to say that no form of judicial injustice can permeate through this power. It has been held in various decisions that the High Court is allowed to exercise its inherent powers when dealing with cases of revision. These inherent powers apply to both substantive as well as procedural matters. However, it can deal only with the question of law and cannot re-examine any evidence.

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