

CHAPTER 25

Appeal and Revision—Criminal

Part A ADMISSION OF PETITIONS

1. Persons competent to lodge petition—A petition of appeal or revision on behalf of a person convicted by a Criminal Court or an application for transfer shall not be admitted by a Criminal Court, unless it is either submitted through the jail authorities, or is presented by the convicted person himself, or by some person authorised by a duly stamped power of attorney to present it on his behalf; and a petition for revision by a complainant shall not be admitted unless it is presented by the complainant or by some person authorised by a duly stamped power of attorney to present it on behalf of the complainant:

Appointment or a pleader by a jail prisoner—Provided that a person confined to jail shall be allowed to appoint his pleader, whether falling under class (1) or (2) of Section 4(r) of the Code of Criminal Procedure [See Section 2(q) of new Code], by means of a printed form, signed by him, and attested by the Superintendent of the Jail, and that no stamp shall be required on this form.

COMMENTS

The definition of term 'pleader' in Section 4(l)(r) CPC is in *wide* sense. It does not impose any restriction or condition in the case of an advocate, a vakil or an attorney of a High Court who therefore, need not be appointed as such by the accuse. Rule 1 Chapter 25-A of Vol. III High Court Rules, being in the nature of an exception to this general rule, must be restricted in its application to the case to which its terms apply. It does not, therefore, extend to a bail application and an accused is properly represented by an advocate in those proceedings even though he is not appointed as pleader by the accused by a Vakalatnama. *Inder Dass v. State*, AIR 1951 HP 31.

Note—A specimen of the form is given in the Appendix attached to this part.

2. Authentication of petitions written by Jail officials for prisoners—Petitions of appeal and revision, written by Jail officials on behalf of prisoners, shall be authenticated by the Superintendent of the Jail and every such petition received from the Superintendent of Jail shall be examined upon receipt, and if it has not been authenticated by the Superintendent, it shall be returned forthwith for this to be done.

3. Petitions received by post—A petition of appeal or for revision received by post otherwise than through Jail or District authorities should, if possible, be returned to the person from whom it was received by post 'bearing'.

4. Pleader engaged by agent—When an agent has been duly appointed by a convict to file an appeal or revision, a pleader engaged by the letter shall be required to file a power of attorney.

5. Court-fee on appeal—No Court-fee shall be charged on appeal preferred on behalf of a prisoner by a pleader or by agent.

APPENDIX

Form of declaration by a person confined to Jail appointing a pleader for presenting an appeal or revision on his behalf in a Criminal Court.

In the Court of *Appellant Petitioner.*

versus

The State Respondent

Charge under Section Sentence

..... from the order of Magistrate,
exercising powers at

I,, son of caste resident of
now a prisoner in the Jail at hereby authorise to file an appeal in
the above case on my behalf and to act, plead and take all other steps in furtherance thereof.

Signatures

or

thumb-impression. of the appellant

or

petitioner

Date

Station

Attestation by the Superintendent of Jail

The above declaration has been made by prisoner No
..., at present confined in the Jail which is under my charge as Superintendent. The

contents of the declaration have been read over to the prisoners who admits them to be correct. Let this be given to his pleader for necessary action.

Signatures

Designation

Date

Station

Part B

THE SUBMISSION OF RECORDS TO THE HIGH COURT FOR PURPOSES OF REVISION

1. Information to be sent along with record—Cases submitted to the High Court for revision of sentence, under Section 438 of the Code of Criminal Procedure, shall be accompanied by the records and by a statement of the case in English, giving—

- (i) a brief abstract of the case ;
- (ii) the sentence or order of the lower Court, and the name of, and powers exercised by, the Magistrate passing it;
- (iii) the particular portion of the sentence or order in which an error on a point of law is believed to exist;
- (iv) the grounds upon which the order of the lower Court should be reversed or modified.

It should also be noted how much of the sentence the accused has undergone; and, if he has been sentenced to fine whether the fine has been realised.

Note—In cases tried summarily by a Magistrate or a Bench of Magistrates and in which there are no records except entries in the Register of Summary Trials (Criminal Register No. XVII), certified copies of the relevant entries in the Register should be submitted with the reference instead of the Register.

2. Cases wherein sentence requires alteration—A distinction should be drawn between cases in which the sentence or order is required to be altered, and cases in which irregularities of procedure have occurred which do not necessitate any alteration of the sentence or order. The former must in all cases be submitted to the High Court, because no other Court is competent to alter a sentence or order otherwise than on appeal. In the latter class of cases it is discretionary with the Sessions Judge or District Magistrate to refer the proceedings to the High Court for orders.

3. Cases of irregularity of procedure—It is not every irregularity of procedure that requires to be reported to the High Court for a formal order on the revision side. Where a similar irregularity has been reported before and disposed of by an order of the High Court, or where the irregularity is trifling and the accused has not been prejudiced, or where there has been no failure of justice on account of the irregularity, the Sessions Judge or District Magistrate is authorized to point the irregularity to the Court concerned in order to prevent its recurrence, and need only forward the proceedings to the High Court, if there are any special grounds for so doing.

4. Prescribed for report—Cases should be reported for revision in the prescribed form on paper of durable quality. The form is no longer printed but the prescribed headings should invariably be filled in on a typewriter.

5. Revision petitions by prisoners in jail—All petitions for revision presented to Sessions Judges and District Magistrates by prisoners in Jail, through the Jail authorities, should be forwarded to the High Court for disposal. In no other case should petitions for revision be submitted to the High Court unless a *prima facie* case for the Courts interference is made out, in which case the records should be submitted and the case reported for revisions in the manner prescribed by these rules.

Part C
PROCEDURE IN HEARING CRIMINAL APPEALS

1. Introductory—The attention of all Criminal Appellate Courts subordinate to the High Court is invited to the procedure laid down in Sections 421 to 423 of the Code of Criminal Procedure.

2. Summary disposal. Appellant to be heard—If, on a perusal of a petition of appeal and the copy of the judgment or order appealed against, and after hearing the appellant or his counsel, or authorised agent, if he appears, the Appellate Court considers that there is no sufficient ground for questioning the correctness of the decision or interfering with the sentence or order appealed against, it may reject the appeal summarily. In acting under Section 421 of the Code of Criminal Procedure, the Court may, and when the records are readily forthcoming ordinarily should, call for and examine the proceedings of the lower Court, but is not bound to do so. When a petition of appeal is presented by the appellant in person or by his counsel or duly authorised agent, the Court should, of course, intimate to such person the day on which it will be prepared to hear him, if the appeal is not brought forward for hearing on the day on which it is presented or if the hearing is adjourned.

3. Notice of date of hearing—If the Appellate Court decides to hear the appeal, notice of the day fixed for hearing should be given to the appellant or his pleader and notice must also be given to such officer as the State Government may appoint in this behalf. The attention of Sessions Judges and District Magistrates is invited to the notifications published in Part C appointing the District Magistrate and in certain cases the Advocate General to be the officers to receive, on behalf of the State, notice of the time and place fixed for the hearing of appeals admitted to a hearing under Section 422 of the Code of Criminal Procedure [*See* Section 385 of new Code]. Attention is also invited to notifications in the same part directing notice of the hearing of certain appeals to be given to the head Railway Administration and the Postmaster

General, Punjab. The notice of the appellant or his pleader need not be a formal notice in writing, if either of them is present in person when the day of hearing is fixed. It will be seen from Section 4(r) of the Code [*See* Section 2(q) of new Code] that the term 'Pleader' includes (1) an Advocate, a Vakil or an Attorney of a High Court, and (2) any Mukhtar or other person appointed, with the permission of the Court, to act on behalf of the appellant.

4. The order fixing the date should state under what section the hearing is—In every case in which a day is fixed for the hearing of an appeal, the order fixing the date should distinctly state whether or not the hearing is to be under Section 423 of the Code [*See* Sections 385(2) and 386 of new Code]. It is understood that information on this point is not always given, and the consequence is that in appeals disposed of by subordinate Courts it is often very difficult to distinguish between appeals rejected under Section 421 [Section 384 of new Code] and appeals in which the sentence is confirmed after hearing under Section 423 [Section 385 of new Code].

5. Appeal should not be dismissed in default—Sessions Judges sometimes dismiss criminal appeals in default. Their attention is drawn to the rulings reported under Criminal Judgments No. 21 of the Punjab Record of 1895 and No. 11 of the Punjab Record of 1905. These lay down that a criminal appeal must be disposed of on its merits and can not be dismissed in default.

6. If appeal cannot be rejected summarily it should be admitted to hearing—The practice which prevails in some Courts of continuing to proceed under Section 412 [Section 384 of new Code], even in cases in which it is found necessary to direct a further inquiry under Section 428 [*See* Section 391 of new Code], is irregular. If it appears that an appeal cannot be properly rejected on the record as it stands, it should be admitted to a hearing under Section 422 [*See* Section 385 of new Code].

7. Contents of Judgment—The attention of Subordinate Appellate Courts is drawn to the judgments reported as 31 Punjab Record 1884 (Cr) and Indian Laws Reports, II Lahore 308. According to Sections 367 and 424 of the Code of Criminal Procedure [*See* Sections 354 and 387 of new Code] the judgments of an Appellate Court should contain the points for determination, the decision thereon and the grounds for that decision. It is not necessary that the Courts should in every case record their decision upon each point raised in the appeal, however, petty. It is quite sufficient in many cases to note that no other point raised by the appellant appears to have any force.

8. Cases for enhancement of sentences to be reported to High Court—It is desirable to point out that though Appellate Courts cannot enhance sentence themselves. Sessions Judges and District Magistrates have the power under Section 438 to refer inadequate sentences to the High Court for enhancement. When a sentence comes before a subordinate Court on appeal which is manifestly inadequate the Judge should, if a Sessions Judge or an Additional Sessions Judge report the case for revision and if an Assistant Sessions Judge bring the case to the notice of the Sessions Judge, with a view to its being reported.

9. Remand—Whenever a criminal appeal is sent back for further inquiry under Section 428 of the Code of Criminal Procedure [*See* Section 391 of new Code] the Appellate Court should invariably fix a date for re-hearing the case, taking care that the date so fixed is in each instance

sufficiently remote to allow of a return being made to the order of remand, and that the case is duly entered under such date in the appropriate register.

Part D
NOTICE OF APPEAL

The following notification under Section 422 of the Code of Criminal Procedure [*See* Section 385(1) of new Code], prescribing the officer or authority to whom is to be given to an appeal which is not summarily rejected, is printed for information and guidance.

I. Punjab Government, Home/Judicial Notification No. 4717-J- (C)/, 56/52148, dated the 25th June, 1956.

In supersession of all notifications issued in this behalf and in pursuance of the provisions of Section 422 of the Code of Criminal Procedure, 1898, the Governor of Punjab is pleased to appoint the following persons or authorities to whom-notice of appeal shall be given if the appellate Court does not dismiss the appeal summarily :

- (a) in an appeal preferred by a railway employee in a case in which he has been convicted of an offence in his capacity as a railway employee, to the administrative head of the railway administration concerned as well as to the District Magistrate concerned;
- (b) in an appeal preferred by a postal employee in a case in which he has been convicted of an offence committed in his capacity as a postal employee to the Post Master General concerned as well as to the District Magistrate concerned ;
- (c) in an appeal which lies to the High Court, to the Advocate General, Punjab, in all cases in which the sentence is one of death, imprisonment for life or imprisonment for a term exceeding four years as well as to the District Magistrate concerned; and
- (d) in all other cases to the District Magistrate concerned.

PART E
APPEALS FROM ORDERS OF ACQUITTAL

1. Appeals to be filed in certain cases—Sessions Judges and District Magistrates should bear in mind the following order to the State Government regarding appeals against acquittals under Section 417 of the Criminal Procedure Code [*See* Section 378 of new Code].

The State Government will not direct an appeal—

- (1) Where the case is trifling in itself and the acquittal involves no erroneous principles of law, the correction of which is of public importance;

(2) Where, however serious or otherwise important the case, the legal guilt of the accused is fairly questionable or the evidence admits of any reasonable doubt, and the Court has considered and weighed it with impartiality intelligence and care;

(3) *merely* on account of the production of fresh evidence after the acquittal;

(4) where there is no distinct probability that the appeal will result in an order of re-trial.

2. Travelling expenses for the accused—In cases where it is decided that an appeal ought to be filed, the Central Government consider that the accused should have legal assistance at his trial and this end in view, the Judge are pleased to direct that the District Magistrate, on receipt of a notice for service upon the person acquitted to show cause why he should not be convicted, shall, if he is satisfied that the accused is unable because of poverty to proceed to the High Court, provide him with sufficient funds to enable him to do so and, in the event of the apprehension of the person concerned and his custody in a lock-up, arrange that the accused be conveyed to the High Court, for the purpose of attending the hearing of the appeal against his acquittal.

3. Legal assistance to the accused—With the same object in view, namely, to give every reasonable protection to the defence, a reasonable fee to enable him to engage counsel, if such is his intention, shall be paid by the Government to the accused in all such cases, whatever may be that result of the appeal and whether he is or is not in attendance when the appeal is heard. He would be at liberty to supplement this himself in order to obtain counsel of superior, caliber, should he so desire. The payment of the fee herein referred to shall be arranged and paid by the District Magistrate concerned in consultation with the Legal Remembrancer to Government, Punjab, in the form of a letter of credit which the accused person's counsel can cash after actual appearance in the High Court.

4. Legal assistance in cases of enhancement of sentence—In the case of an application for enhancement of sentence made by the State Government the same procedure should be followed in the matter of provision of counsel for the accused as a prescribed in paragraph 3 above.

5. High Court cannot alter conviction from Section 304 to 302 I.P. Code unless there is an appeal under Section 417, Cr P.C.—In this connection it should be noted that the Privy Council has held that when a person is tried for an offence under Section 302, Indian Penal Code, but is convicted under Section 304 Indian Penal Code, and sentenced to a term of imprisonment, the Sessions Judge's order amounts to an acquittal under Section 302. On application to a High Court for revision of sentence, the High Court has no jurisdiction in view of the provisions contained in clause (4) of Section 439, Criminal Procedure Code [Section 401 of new Code], to the conviction to one under Section 302 and sentence the accused to death. In such cases an appeal under Section 417 of the Code [Section 378 of new Code] is required to give the High Court jurisdiction, if it is desired to alter the conviction, (Indian Law Reports, Allahabad, Volume 50, page 722).

COMMENTS

The appellant was tried by a Sessions Judge on a charge of murder under Section 302 of the Indian Penal Code. He was convicted under section 304 of culpable homicide not amounting to murder, there being power by section 238 (2) of the Code of Criminal Procedure so to convict him upon the charge under section 302; he was sentenced to five years' rigorous imprisonment. No

acquittal of the charge under section 302 was recorded. The Local Government did not appeal, but applied for revision on the grounds that the appellant should have been convicted of murder, and that the sentence was inadequate. The High Court thereupon convicted the appellant of murder and sentenced him to death.

Held that the finding at the trial was to be regarded as an acquittal on the charge of murder, and that consequently section 439 (4) of the Code of Criminal procedure precluded the High Court from having jurisdiction upon revision to convict on that charge; that though upon an appeal by the Local Government the High Court would have had before it the same materials, yet, the order having been made without jurisdiction, an injustice had been done to the appellant, bringing the case within the restricted jurisdiction exercised by the Judicial Committee in criminal matters; that the case should not be remitted to the High Court to consider whether the sentence on the conviction under section 304 should be enhanced, but that the order of that Court should be set aside and the order of the Sessions Judge restored. *Kishan Singh vs. The King-Emperor*, (1928) I.L.R. L All. 722 (P.C.) (*Emperor vs. Sheo Darshan Singh*, (1922) I.L.R. 44 All. 832, and *Emperor vs. Shivputraya*, (1924) I.L.R. 48 Bom. 510, approved.)

6. Requisition for records for securing scrutiny when appeal for acquittal is contemplated—For securing the original records of trial Court for scrutiny in cases where an appeal against an acquittal, etc., is under contemplation the following procedure should be observed :

(a) Where there has been a complete acquittal by the Sessions Court of all the accused in a case, the Sessions Judge should, on a certificate furnished by the District Magistrate that an appeal from acquittal is in contemplation, hand over to the District Magistrate the sessions record of the case and such other connected papers in the custody of the Sessions Court as the District Magistrate may require.

(b) In cases where some of the accused have been convicted and others acquitted by the Sessions Court and no appeals against convictions are pending the procedure laid down in (a) above should be followed, but where appeals from convictions are pending, the records should, on receipt of a certificate from the District Magistrate that an appeal from an acquittal is in contemplation, be forwarded to the High Court.

(c) When sending records to District Magistrate, Sessions Judges should see that the Sessions records of the case are complete in all respects and include the Committing Magistrate's records and Police papers if they are in the possession of the Sessions Court.

7. Complainant's appeal—Section 417 of the Code has been substituted by Act No. 26 of 1955. Now where an order of acquittal is passed in a case instituted upon complaint, the complainant can file an appeal from the order to the High Court if he has been granted special leave to appeal on an application made under Section 417(3) [*See* Section 378 of new Code]. After the High Court has refused such an application the State Government would be debarred from filing an appeal from the order of acquittal.

Part F APPEALS IN SECURITY CASES

1. Appellate Court in appeals on security cases—The proviso to Section 406 of the Code of Criminal Procedure under which the State Government was authorised to direct that appeals from orders passed by Magistrates under Section 118 [*See* Section 373 of new Code] shall lie to the District Magistrates and not to the Court of Sessions has been omitted by Act No. 26 of 1955.

Part G
SUPPLY OF COPIES TO APPELLANTS AND APPLICANTS FOR REVISION, AND
TRANSMISSION OF APPEALS AND APPLICATIONS OF PRISONERS TO APPELLATE AND
REVISIONAL COURTS

1. Introductory—The particular attention of Sessions Judges and District Magistrates is invited to the following directions relating to the supply of copies to appellant and applicants for revision, and for the transmission of appeals and applications of prisoners to the Court to which they are addressed. Superintendent of jails have been supplied with these directions to guide them in dealing with applications for copies made by prisoners under their custody.

2. Appeal to be accompanied by copy of judgment or order. Free supply of copy in certain cases—Section 419 of the Code of Criminal Procedure requires every petition of appeal presented to a Criminal Court to be accompanied (unless the Court to which it is presented otherwise directs) by a copy of the Judgment or order appealed against, or in cases tried by jury by a copy of the heads of the charge recorded or a copy of the charge taken down in shorthand under Section 367 of the Code [Section 354 of new Code]. This copy (or a translation of the judgment where the accused desires to have a translation), when the appellant has been convicted in any case other than a summons-case and a copy of the finding and sentence when the accused has been sentenced to imprisonment, must under the provisions of Section 371 of the Code [See Section 363 of new Code], be given free of cost.

3. Application for revision to be accompanied by copy of judgment. Free supply of copy to accused—Similarly, applications for revision will not be received in the High Court unless accompanied by copies of the judgment or judgments impeached, unless the Court otherwise directs under Section 419, Criminal Procedure Code. If it is intended that the High Court should give such directions, it should be stated clearly why the person convicted is unable to furnish the copy. When the applicant has been convicted in any case other than a summons case, he is entitled to get, free of charge, a copy of translation of the judgment of the Court which convicted him and if he has been sentenced to imprisonment, also of the finding and sentence. If he has appealed, he is entitled, in view of Section 424 of the Code [See Section 387 of new Code], to get free of cost, all these copies or if so desired a translation of the judgment of the Appellate Court also. This does not however entitle him to get copies of the judgment, finding or sentence of the trial Court a second time.

No application/or revision to be detained for more than a week for copy—No application for revision is to be detained for more than a week for the purpose of granting a copy of the judgment impeached. If a copy cannot be given within the time, the application must be forwarded to the High Court without a copy of the judgment, with an explanation of the cause of not granting copy, for orders.

Immediate supply of copies when sentence of imprisonment is pronounced just before holiday—Applications for copies made by a person sentenced, to imprisonment, on a working day preceding a holiday, should be treated as urgent. Such copies should be supplied on the same day as far as possible, and if that is not found practicable at least on the next day.

4. Free supply of copies to jail prisoners in summons cases—The High Court has decided that notwithstanding anything contained in paragraphs 2 and 3, when the accused is in jail, a copy of the judgment or order in a summons case may be supplied free of cost if he or his agent requires it for purposes of filing an appeal or petition for revision and not otherwise, provided that a second copy of the judgment or order of the original Court shall not be supplied free of cost for purposes of revision if he has already obtained one for the purposes of filing an appeal.

5. Appeal by jail prisoner to be sent through District Magistrate—Petitions of appeal preferred by prisoners through the Superintendent of the Jail should be sent to be District Magistrate to be forward to the Appellate Court with the records of the case.

6. Proper channel for sending records to High Court—When the appeal lies to the High Court, the District Magistrate should, if the appeal is from a sentence passed by himself in exercise of the powers conferred under Section 30 of the Code of Criminal Procedure, transmit the petition of appeal, copy of judgment and District Magistrate's records (which should always include the Police papers connected with the case), with a copy of the order if any, passed by the Sessions Judge, under Section 380 of the Code, direct to the High Court. In other cases the petition of appeal, copy of judgment, District Magistrate's records (including the Police papers, as above provided) should be forwarded to the Sessions Judge in order, that the record of the Sessions Court may be transmitted therewith.

7. Typewritten copies of record and judgment to be sent to High Court—Whenever the appeal of a person, convicted by a Court of Sessions is forwarded to the High Court, particular care should be taken to see that the petition of appeal is accompanied by a typewritten copy, *in English*, of the whole proceedings of the Sessions trial. When the sentence is one of death or imprisonment for life, *two* typewritten copies of the record should be sent.

8. Extra copies to be prepared in advance by stenographers—So far as possible, stenographers in trying from dictation evidence and judgments in all classes of cases should prepare by duplication all extra copies likely to be required for this purpose, as well as for supplying the accused or any other person requiring a free copy. This should avoid the preparation of fresh copies by the Copy Clerk. Similarly these copies should be duplicated when they are likely to be required by any subordinate Court.

9. Despatch of records in revision applications by jail prisoners—Applications for revision sent to the District Magistrate by the Superintendent of the Jail should be forwarded to the High Court unaccompanied by records, unless the District Magistrate sees fit to report the case for revision, in which case he must follow the procedure laid down in Chapter 25-B of this Volume.

10. Applications under Section 548, Criminal Procedure Code—Whenever an application is made under the provisions of Section 548 of the Code of Criminal Procedure, in a case in which the records are before the High Court, by a prisoner in Jail, and such application is submitted through the Jail authorities with the prisoner's grounds of appeal, the petition of appeal should be forwarded at the same time.

11. Court-fees on copies supplied to accused and prisoners—Attention may here be drawn to Punjab Government Notification No. 10495, dated 27th March, 1922, by which the Court-fees on copies of certain documents furnished to accused persons and prisoners by Criminal Court have been remitted.

Part H
TRANSMISSION OF APPELLATE COURT'S ORDERS
TO LOWER COURTS

Rules referring transmission of Appellate Court's order to Lower Courts—The following rules should be observed in regard to the transmission of Appellate Courts orders to Lower Courts.

Rules

1. The Sessions Judge will send copies of all his judgment on appeal to the District Magistrate.
2. The District Magistrate will transmit the copies to the original Court for information and return direct to the Record-Keeper, to whom the original records will be sent at once.
3. Appellate Courts will attach to the original record the following form:

Date

Copy of judgment despatched by District Magistrate

Copy of judgment despatched by Additional District Magistrate

Copy of judgment received by Record-Keeper

Translation is/is not attached).

(It will be simpler to have only one form).

4. (a) The Record-Keeper will maintain a running list prepared from the above form of all cases in which copies of judgments have been sent out. When the copies of judgments are returned to him by the Original Courts, he will add them to the records, fill in the date of receipt, and strike those cases off his running list.

(b) If copies are not returned within 10 days of despatch, he will issue a reminder (which should be on a printed form), and if that is ineffective, report the matter to the despatching Court.

(c) The running list will be in the following form :

Name of case	Date of despatch	Date of reminder, if any
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(d) The reminder will be in the following printed form :

To the Court of

A copy of the judgment of..... was despatched to you by the on and has not yet been received by the Record-Keeper. Please return at once.

Date..... Record-Keeper

5. Officers presiding over subordinate Courts held at District Headquarters, if in any particular case they desire to see their original record, will be allowed to call for it provided that it must not leave their Court room.

6. (a) Translations of judgments will be sent if any non-English knowing officer asks for them. If they are sent, they will be attached to the English copies, and the same procedure will be followed.

(b) Appellate Courts will maintain lists of officers of subordinate Courts requiring translations so that translations may be made as a matter of course for the presiding officers of those Courts.

(c) If a translation is attached, the fact will be noted on the form described in Rule 4 above.