

Section in the case of
any proceeding the



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Section 401 of the code then provides that in the case of any proceeding the record of which has been called for, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Ss. 386, 389, 390 and 391 of the Code, or on a Sessions Court by S. 307 of the Code. If the Judges hearing the matter are equally divided in opinion, the proceedings of the case, along with their opinions are to be placed before another Judge of that Court, who must then deliver his opinion, and the Judgment must be based on such opinion. The jurisdiction exercised by the High Court under S. 401 is known as its revisional jurisdiction.

It gives a very wide scope to the Court to test the correctness, legality or propriety of any finding, sentence or order. The High Court may also interfere to examine the regularity of any proceedings. Whilst doing so, it can exercise all the powers of an Appellate Court, including directing a tender of pardon to an accomplice. S. 401 further provides that if, in an appealable case, no appeal is filed, and the Court cannot entertain any proceeding by way of revision at the instance of the party who could have filed the appeal. This is so because the High Court would not interfere unless all the other remedies provided by law have been exhausted. S.

401 also vests a discretion in the High Court to convert a revision application into a petition of appeal. This can be done only if the following three conditions are satisfied: (a) It should be an appealable case. (b) The revision application must have been made on the erroneous belief that an appeal does not lie. (c) The High Court must be satisfied that it is in the interests of justice to convert the revision into an appeal.

Whether acquittal can be converted into conviction in revisional proceedings:

S 401 provides that the powers of revision of a High Court cannot be exercised by it to convert a finding of acquittal into one of conviction. It is, however, open to the High Court to set aside the order of acquittal and direct a re-trial, if it is a case of non-recording of evidence or the improper recording of inadmissible evidence. (Ma Nyein, — 1929 7 Rang. 538)

Commenting on the scope of S.

401, the Supreme Court has observed that although all the powers of an Appellate Court are conferred on a High Court, the power to convert an acquittal into a conviction is specifically excluded. This does not mean that in dealing with a revision application of a private party against an order of acquittal, the High Court can, in the absence of any error on a point of law, re-appraise the evidence and reverse the findings of fact, stopping short of finding the accused guilty and passing a sentence on him by ordering a retrial. (Logendranath Jha v. Biswas, — 1951 S.

C. R. 676) The Rajasthan High Court has observed that, as a general rule, the High Court does not interfere in revision against orders of acquittal, unless there is a gross error of law, and it is necessary to do so in the interests of public justice. However, cases of defamation, and other similar offences where the Government cannot be expected to be keenly interested, stand on a slightly different footing, and the High Court ought to interfere if there is any gross error of law or procedure which may have resulted in injustice. (Hanuman v.

Bhonri Lal, — 1953 Raj. 811)

Enhancement of sentence and challenge to conviction:

S. 401 (2) provides that no order under S. 401 can be made to the prejudice of the accused or any other person, unless a person is given an opportunity of being heard in his defence either personally or through his Pleader. This raises an interesting, though controversial issue: When a revision application is filed for enhancement of the sentence against the accused, can he, whilst showing cause against the enhancement, challenge his conviction as well? The Bombay High Court has held that if a revision application is before a High Court to enhance the sentence passed by the Magistrate, the accused, whilst showing cause against the enhancement, is also entitled to challenge his conviction. (Mehta, — 27 B. L.

R. 1334) In a subsequent case, the Bombay High Court held that if a revision petition of the accused against his conviction is dismissed, and a notice to enhance his sentence is subsequently issued on an application by the Government, the accused cannot, at the hearing of the application for enhancement of the sentence, be heard on the merits of the conviction. (Inderchand, — 36 B. L. R. 954) Sharply differing from the above view is that of the Lahore High Court, where a full Bench has held that if a convicted person is called upon to show cause why his sentence, should not be enhanced, he is entitled, to show cause against his conviction, despite the fact that his petition for revision has already been dismissed in limine. (Atta Mohammad, — 1944 25 Lah. 391) The Supreme Court had held that if an appeal or revision application of the accused is dismissed summarily or in limine, without issuing a notice to the other side, and subsequently, the High

Court calls upon the accused to show cause against enhancement of his sentence, the accused is entitled to also show cause against his conviction.

If, however, the earlier appeal or revision application of the accused is heard and decided by the High Court after hearing both the sides, the High Court judgement replaces the judgement of the lower Court and becomes a final judgement. Thereafter, the High Court has no power to move suo motu or to entertain a subsequent application for enhancement of the sentence.

(Chopra, — A.

I. R. 1956 S. C. 633)