PROCEDURE OF CRIMINAL APPEAL IN THE LIGHT OF JUDICIAL PRECEDENTS

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Abstract

The discussion in the paper is section-wise and in consonance with the Criminal Procedure Code (CrPC) of 1898 of Pakistan. The central purpose of writing this paper is to bring forward the precise account of the sections of CrPC as akin to Appeal. The reason for mainly relying on the case laws for explaining the topic is twofold. Firstly, we commonly have access to the text of the concerned code, but the Code's language is so convolutedly laid down that we sometimes make equivocal interpretations of the same. Here the case laws contain the explanations of these sections done by the illustrious and legally adept judges. Moreover, the plus point is that the judges' elucidation has more value because of their position and lifetime practical acquaintance. Secondly, the case laws contain practical implications of the provisions of the Code. It demonstrates how a said provision is used in real situations. The practical implications of the provisions enable us to look at them from numerous angles and make diverse interpretations of the same. To be brief, case laws show how and in how many ways a provision can be employed in practical situations.

Keywords: *Criminal Procedure Code (CrPC), Appeal, Code, Case law, Interpretation, Provisions.*

1. INTRODUCTION

The course of the criminal justice system has a profound impact on a person's life, above all on the right to life and individual's autonomy. Every single organization erected by hominids is prone to imperfection and error; thence, same applies to the verdicts made by the courts, as well Judges are humans too; they are also subject to err. Thus, specific provisions would need to be in place to scrutinize low tier court verdicts to obviate errors of justice. In case of criminal side of the law, it became essential for the judicial system to dispense justice more precisely because this province of law deals with crime and other severely heinous acts which directly and to a greater degree affect human life. If injustice is done while penalizing the accused or by acquitting the same, in either case, a person or society (in the broader sense) will suffer. With that in mind, specific provisions have been included in the criminal Appeal proceedings against a verdict or criminal court Appealable orders. It is included

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to overcome the mistakes made by the lower tier of the judiciary by the higher ones ("right to appeal," n.d.). Appeal is the continuation of the original proceedings before higher forum for testing soundness of decision of lower court (Ali Ahmed Baloch V. The State through NAB Authorities, 2013). The core aim of appeal is to protect the convict against any judicial error or other illegalities in trial and procedure ("Criminal appeals," n.d.). Thus, appeal is an instrument of correction which is used by superior judiciary to correct the mistakes of inferior ones (Nobles & Schiff, 2002, p. 676). This research will delve into the topic to show how the concept of Appeal is procedurally applied in criminal cases of Pakistan. The limitation of the research included studying iota of other scholars and books because there is not much material available on that narrow scale approach as this research is trying to make. This research aims to explain the theoretical procedure of Appeal, as provided in CrPC 1898 of Pakistan, in light of case laws and practical implications.

2. LITERATURE REVIEW

Kmiec, in his article "The origin and current meaning of Judicial Activism" (2004) said about the topic in hand that it is the process in which formal changes, by request of concerned parties, is made to an official decision by the higher authority after proper perusal. He took the stance that Appeal serves as an error correction procedure and as a process for elucidating and construing law.

Joseph W. Dellapenna and Joyeeta Gupta, in their book "The evolution of the law and politics of water" (2009) stated that Appeal is not something modern. However, it, too, has its roots in the early chronicle of Human race. They alleged that in the initial civilization of Babylon, there was the notion of Appeal and appellate court. The governors used to act as the apex appellate court.

Richard Nobles and David Schiff in their work "The Right to Appeal and Workable Systems of Justice" (2002) talks about the practicalities of right of appeal. They are of the opinion that instead of looking at the pure theoretical procedure we need to focus on the practical application of appeal and its process that way many newly emerged problems can be solved. The work also highlights the point that for a good justice system it is necessary that superior judiciary must refocuses its attention from hierarchial control over lower tier courts to problem of deference between the two-tier courts.

J.R. Spencer in his article "Criminal appeals founded on a change in case-law" (2014) discuss the evolution of criminal appeal in the light of case laws. The most important cases in this regard is highlighted and discussed by the author in his work. It is also pointed out in which manner these cases

changed the criminal appeal. The main issue highlighted is that of justice and finality of cases. Previously judges use to prefer finality over justice but the same trend changed as new case laws came into existence.

In his article "The limitation of the right of Appeal in criminal cases" (1904), N.A Smyth tried to tackle the question of limitation over-exercising the right of Appeal. How much time is to be given for a person to exercise his right to Appeal. He argued that there must be a short, reasonable limit; otherwise, litigation will prolong, and court processes will become slower.

"The Criminal Procedure Code (CrPC) of 1898" talks about the right of Appeal in its section 404 that right of Appeal will only be open to a party if the same is explicitly provided by any of the law which is in force for the time being or else there is no right of Appeal.

All India Reporters in "Karam Dad v. Emperor" lay down that right of Appeal is a statutory right and not the one to be called a natural right, which means that right to Appeal, is not inherent.

The main aim of this research is to purely make a close perusal of the topic supra mentioned in the perimeter of Code of Criminal Procedure of 1898. Sources so for we have explored chiefly discuss the topic in hand generally. On the other hand, our primary focal point is to discuss the concept of Appeal as given in the Code mentioned above. In this paper, we will not only look at the theory as written down in the CrPC 1898, but we will also try to expound the practical implementation of the same by mainly relying on the judicial practice and case laws of Pakistan and India.

3. RESEARCH METHODOLOGY

The research methodology adopted for this research is qualitative and descriptive. The researcher has studied relevant sources and collected data from various books, journals, research papers, articles, case laws, etc. The data has been brainstormed and arranged in APA research style in the whole paper. The researcher has analyzed the collected data in the light of judicial precedents.

4. ANALYSIS

4.1. Etymology of Appeal

Etymologically roots of the word "Appeal" can be traced back to Latin. It is derived from the Latin word "*appellare*" which means to address. Which in turn is derived from the combination of two Latin words, "*ad*" means "to" and "*pellere*" means 'to drive". Later the old French adopted the same word in the form of "*Apel*". Then from there it became part of middles English. It takes the

form of word *"Appeal"* (Appeal | Origin and meaning of Appeal by online etymology dictionary, n.d.).

4.2. Definition

The term "Appeal" is nowhere expounded and clarified in the Code of criminal procedure, but the general definition can be found in different places. Some of these definitions are cited here;

1. "The complaint to a superior court for an injustice done or error committed by an inferior one, whose judgment or decision in the court above is called in to correct or revise. It is the removal of a cause from a court of inferior jurisdiction to one of superior jurisdiction, for the purpose of obtaining a review and retrial" (Black, 1979, p. 88).
2. "A challenge to a previous legal determination. An Appeal is directed towards a legal power higher than the power making the challenged determination" *(*Appeal,n.d*.)*.
3. Appeal is the procedure by which matters are revisited by a superior authority when the parties ask for a formal amendment to a formal decision. Appeal serves both to rectify errors and to clarify and interpret the law. (Wikipedia, 2012).
4. A judicial procedure whereby a case is brought before a superior court for consideration of a lower court's decision. (Merriam-Webster, n.d.).

4.3. Right of Appeal

The word "Appeal" connotes the right to carry a lis from a lower to a superior forum to determine the maintainability of the lower court's verdict and, if not, to correct errors and injustice committed by the lower court (Smyth, 1904, p. 317). An Appeal is the conception of the statute and only subsist where explicitly given. Thus, the right to Appeal is a statutory and substantive one. While the right to lis is an inherent, general and common law right, there is no need for it to be provided by any statute. It can also be said that a right to sue is the primary right of a person, but the right to Appeal is a secondary right that is totally dependent on the primary right. The right to Appeal does not exist as a natural right but a one created by statute (Karam Dad v. Emperor, 1941). However, Appeal is a statutory right but is maintainable only when some statute provides for the remedy of Appeal. It cannot be conferred by consent of the parties (Wahid Bus and Mailsi Transport Co. Ltd. V. Afzal Transport Co., Ltd. Etc., 1966; Bahadur V. Mirza Abdul Qayyum etc., 1969). Section 404 of the CrPC also lay down provisions in the same context as it says, "no Appeal shall lie from any judgment or order of a criminal court except as provided for by

this code or by any other law for the time being in force". After plain reading of this section, it can be inferred that Appeal is a statutory right and not an inherent one. It can also be inferred that it is not necessary that Appeal must lie to a superior court in every criminal case. Section 404 made this point crystal clear that right of Appeal will only be available to a person if it is expressly given by CrPC, 1898 or by law besides CrPC, which is in force, for the time being; otherwise, there is no right to Appeal.

4.4. Admissibility of Appeal

Section 418 of the concerned Code lay down that "an Appeal may lie on a matter of fact as well as a matter of law". In other words, we can say that Appeal on matter of facts and matter of law is admissible in court of Appeal. Now, what are matter of fact and matter of law? In general, we can say that matter which goes in denial of a declaration (fact) and not in avoidance of it is called matter of fact (The lectric law library, n.d.). Matter of law - That which goes in avoidance of a declaration or other pleading, on the ground that the law does not authorize them (The lectric law library, n.d.). It does not deny the matter of fact contained in such pleading, but admitting them avoids those (Legal definitions of matter of fact, matter of law, matter of record, n.d.). Matter of law, is that which is referred to the decision of the court; matter of fact is that which is submitted to the jury (The lectric law library, n.d.). Therefore, the subject of an Appeal can be uncertainty or any problem with the facts of the case or the specific law relating to the matter or the way the lower court interprets the law. It is also possible to put forward an Appeal to an appellate court, the subject or the core problem of which is both factual and legal.

Contrary to Appeal, in case of revision, the concerned court can only entertain problems relating to the matter of law and is not allowed to consider questions relating to facts of the case generally.

4.5. Presentation of Appeal

Section 419 contains the provision relating to this matter. Appeal should be made in the form of a petition. Now, what is petition? A formal written request for judicial action (Wordweb Software, n.d.) is called petition. Form of petition of Appeal corresponds with the complaint in the original proceeding and gives jurisdiction to the appellate court. There is no distinction whether the Appeal is against the order of conviction or acquittal (Queen-Empress V. Pohpi, 1924). In either case it will have the exact positioning in the court of Appeal. A joint Appeal against several accused persons convicted by the lower court can (also) be filed (State of Gujrat v. Ram Prakash, 1970).

The appeal, which is to be in the form of petition should be written. The presentation of Appeal to the court should be made by the appellant himself or by his pleader; besides these two, no other person is allowed to file an Appeal. But the presentation of memo of Appeal by the clerk of appellant's pleader is equivalent to a presentation of Appeal by the pleader himself when he signs it and he is duly authorized (Queen-Empress v. Karuppa, 1919) But in some cases court also held that presentation of Appeal could be done by counsel or his clerk (Kashmira Singh V. The State, 1965). The word "pleader" defined in S. 4 has enlarged meaning so that the convict may have an opportunity of presenting their case fully before the appellate court, even if they are not in a position to engage a regular counsel. The appellate court's permission is not at all needed by a person appointed by the accused as his agent by a power of attorney to present an Appeal on his behalf. The Appeal presented on behalf of the appellant by his father as mukhtar is adequately presented in court (Muhammad Sharif Khan V. Azad J. & K. Govt., 1952).

The presentation of Appeal by post or depositing in a box kept in the court compound for deposition of papers for the court (Queen-Emperess v. Vasudevayya, 1929) is not a proper presentation of Appeal.

At the time of filing of Appeal, it is compulsory for the party to submit a copy of the lower court's judgment or order, against which Appeal is brought, in the appellate court. Copy of the judgment or order means the certified copy (State of U.P v. C. Tobit, 1958). In proper cases, the court entertaining Appeal may dispense with the copy of the judgment or the order Appealed against (Shambhu v. State, 1956), not only at the time of filing of Appeal but at any subsequent stage (Parma v. Mohan, 1956).

4.6. Contents of the Petition of Appeal

There is no provision in CrPC that lays down the contents of the petition of Appeal. Nevertheless, in a petition of Appeal the appellant should state grounds on which he attacks the judgment or order appealed against. It should not contain bald grounds such as that the order of acquittal is against the weight of evidence on the record contrary to law. A memo of Appeal is meant to be a sufficient statement of the grounds upon which the appellant proposes to support the Appeal. It is a notice to the court that such and such specific grounds are proposed to be urged on behalf of the appellant, as also a notice to the respondent that he should be ready to counter those specific grounds. An appeal should not contain scandalous or defamatory allegations against the court whose judgment or order is under Appeal.

4.7. Procedure when appellant in jail

In addition, Section 420 contains the provision relating to the presentation of Appeal when appellant is in jail. Section 420 read as follow;

"If the appellant is in jail, he may present his petition of Appeal and the copies accompanying the same to the officer-in-charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court"

Before discussing the section in detail, we need to know about the kinds of appeal discussed here. Therefore, there is "jail Appeal" and "representative Appeal". When the appellant files the Appeal while he was locked up in jail as per procedure as stated above, then this type of Appeal is called jail Appeal. In contrast, an Appeal which the appellant files through his pleader or representative is called a representative Appeal.

However, if appellant is in jail, he may present his petition of Appeal and the copies accompanying the same to the in-charge of the jail who shall thereupon forward such petition and copies to the proper appellate court. Every facility, such as pen, paper and even a writer, should be allowed to the prisoner to prepare his petition of Appeal. Appeal filed through jail can be summarily dismissed or can also be dismissed in limine (Muhammad Ali v. The State, 1982). If a jail Appeal has been summarily dismissed, the convict has a right to re-agitate the matter by filing an Appeal through counsel. If a situation arises where both jail and representative Appeal are filed simultaneously and the court is adjudging both. In that case, preference will be given to the one filed prior in time.

4.8. Summary dismissal of Appeal

An appellate court is not required by law to write a judgment while dismissing an Appeal summarily. It is clearly stated by section 421(1) that while entertaining Appeal under sections 419 and 420, if the court considers that there is no sufficient ground for interfering, it may dismiss the Appeal summarily. However, it is desirable that in dealing with an appeal under section 421, the court should give some reasons for dismissing the appeal summarily. It should record at least so much as would satisfy the High court when an application for revision is made that it had fully considered all the questions in issue. In criminal Appeal, the order must show that the court had applied its judicial mind to the questions of fact and law raised in the case, though a complete judgment is not required to be recorded (Abdur Rashid Munshi Etc. v. The State, 1967).

The appellate court must record in brief the reasons that lead to the appeal's summary dismissal because he cannot just dismiss an Appeal on

minuscule grounds. Section 421 indeed empowers the appellate court to dismiss an appeal summarily, but that power cannot be exercised in an arbitrary manner. Section 421 does not empower a court to dismiss an Appeal without careful ascertainment of the same. Even though it is not necessary under the law to write a detailed order of dismissal, however concise it may be, it should at least indicate that the court had understood the case. For this purpose, it is necessary that it should briefly give reasons for summary dismissal of Appeal (*Ghulam Muhammad v. The State,* 1960) If an appeal is dismissed without giving reasons in support of the same then the judgment was held not confirming to the requisites of section 421 (Abdur Rashid Munshi Etc. v. The State, 1967) and thus is considered flawed in the eyes of the law. The appellate court has to exercise its discretion in a sound and judicial manner (The State v. Ramzan, 1963) and conform to principles of natural justice.

According to the proviso of section 421(1) court of Appeal cannot summarily dismiss the Appeal filed under section 419 (petition of Appeal) before hearing the appellant or his pleader or his representative. It must give him a reasonable opportunity to present himself before the court, and then after that, the court can proceed as per subsection 1 of 421. The reasonable opportunity to be heard includes the right to reply (Amanant v. Magendra, 1944) and refer to certified copies of evidence (Manga v. Emperor, n.d). Now, if we look at the proviso carefully, only petition of Appeal is mentioned and not the jail petition (420). Thus, it means that in case of jail petition the court can summarily dismiss the same without hearing the appellant in jail. It is not compulsory for the appellate court to hear the appellant in that case. Therefore, a summary dismissal without hearing the appellant in jail petition is valid and is not bad at all in the eyes of the law.

In addition, Sub-section 2 of section 421 empowers the court for calling the record of the case in hand. Whether the record should or should not have been sent for is the discretion of the court. The court will be perfectly justified in summary dismissal if the case is too simple and free of complexities (Ali Khan Etc. v. The Crown, 1969; Zahur-ud-Din v. The State, 1969)

4.9. Notice of Appeal

Section 422 CrPC, provides that if an appeal is not dismissed summarily under section 421, the appellate court is required to cause notice to be given to the appellant or his pleader of the time and place on which such Appeal is to be heard. A copy of the grounds of Appeal will also be furnished to them if they demand so. Generally, a notice of Appeal is only issued to the appellant or his pleader and to the public official appointed by the government according to section 422. Nevertheless, in the case of Appeal against order of

acquittal by the provincial government (417-A (2)) and like Appeal under section 417 a similar notice is to be given to the accused.

Notice to the appellant or his pleader is obligatory and court cannot just get away with it. The disposal of Appeal without giving such notice is illegal (King-Emperor v. Dahu, 1935; Anwar Hussain v. State of U.P., 1981). All the proceedings in the appeal subsequent to non-service of notice consisting of the appeal's hearing and the delivery of the judgment in consequences thereof are without jurisdiction (Shiba v. Kailash, n.d). If a situation arises in which there is more than one accused and all of them is not served with notice. The proper procedure is to split up the Appeal, hear the Appeal against those who have been served and adjourned the hearing of the Appeal against those accused who have not been served till they are served (State Government, M.P v. Vishwanath, 1954).

Besides that, the notice is also to be given to the proper officer of the government. This rule\provision is imperative, and the omission to give such a notice could not be treated merely as an irregularity.

Notice of hearing to the appellant or his pleader and allowing him to be heard was a legal obligation. It is right of the accused to be heard and without service of notice upon him Appeal against his acquittal cannot be heard and disposed of (Muhammad Younis v. Yasin Ayub etc., 2009).

4.9.1. Powers of appellant court in disposing of Appeal (sec. 423)

Section 423, CrPC defines the capacities of the appellate court in dealing with Appeals. These powers only came into play when the summary dismissal and notice of Appeal stage is passed. The powers listed are conferred upon all the courts regardless of whether it is a High court or sub-ordinate courts except section 423 clause (a), which deals with Appeals against an acquittal order that lies exclusively to the high court (section 417). After sending for the record and after perusing the same and hearing the parties, the appellate court, if satisfied that there are insufficient reasons for interference, can dismiss the Appeal. If it is not satisfied, it may decide otherwise.

A. Appeal from an order of acquittal

If an appeal is made against an order of acquittal, the court, if it does not dismiss the same, may-

1. Override the order under consideration and guide that additional inquiry be made, or
2. Decide to send back the accused for trial either to the Session or High court, or
3. Find him blameworthy or deliver a verdict against him as per law.

B. Appeal from a Sentence

If the court did not dismiss the same, it can order one of the following in case of Appeal from a sentence/guilty verdict.

1. Annul the findings and sentence, and exonerate or liberate the accused, or
2. Order that the accused be put on trial by a competent Court inferior to the Appellate Court which passed the order, or sent the same for trial
3. After the perusal, it may maintain or lessen the sentence with or without modifying the finding, or
4. It can change the sentence nature either with or without any reduction or modification in findings, but the same modification in the sentence is subject to the Section 106, sub-section (3),
5. If an Appeal is preferred against any other order, the appellant court can vary or overturn such order.
6. Or the court of Appeal, if necessary, can also make alterations or any resulting or related order that may be just or proper.

C. Judgment of subordinate appellate court (sec. 424)

The provisions of section 424 have made the application of chapter XXVI (of judgment) applicable to the court of Appeal's decision except that of the High court. If we peruse the provisions of section 367 to which this section is referring. In that case, it can be seen that this section is only applicable to the judgments passed by a court in the exercise of primary jurisdiction. However, this section extended its application to the judgments passed in appellate jurisdiction too. It is also laid down in the section that it will only operate to the extent it is practicable. If the application, as mentioned earlier, produces any difficulty or absurdity, then the court is not bound to stick to the same.

The proviso to section 424 also made an exception that the presence of the accused at the time of judgment is not at all compulsory. However, it is the discretionary power vested in the appellate court to decide for itself to bound the accused to ensure his presence or not.

Section 367 provides writing of the judgment by the court, i.e., it has to be documented in the court's language, must contain the ground or grounds for conclusion/finding, the verdict based on it and must be dated and endorsed by the presiding officer in open court at the time of pronouncement of the same. As per section 424, the provisions of section 367 are mandatory and does not draw any distinction between original and Appeals from acquittal.

4.9.2. Suspension of sentence and bail (sec. 426)

Section 426 armed the appellate court with the power to suspend sentence and grant bail even if the Appeal is pending. However, it is necessary to be kept in mind that these powers should be exercised on rare occasions and only in the rarest of rare cases.

Section 426(1) empowers the court of Appeal to postpone the execution of decree or order against which the appeal is preferred and liberate the appellant on bail if he is in confinement and his Appeal is pending. The exact section does not recite any grounds on which the sentence can be suspended. Nevertheless, it just said that a sentence could be suspended on reasonable grounds, which the court thinks appropriate. When an order of suspension of execution of sentence is made, the appellant may be unconfined on bail or on his own pledge.

Section 426(1) confers two powers on the appellate court, namely, suspension of the verdict or order against which Appeal is made and the appellant's release on bail if he is confined. The appellate court has no authority to suspend the conviction order (R.K Dev v. State of Orissa, 1971).

Sub-section 1A lay down that a convicted person can also be released by bail if the delay happens in the Appeal hearing. But if the delay is because of the appellant himself or because of anyone on his behalf, then no bail will be granted to him under this section. Now, a convicted person will be released on bail if,

1. He or she is imprisoned for a period of 3 years, and his Appeal is not decided within 6 months.
2. He or she is imprisoned for a period exceeding 3 whole years but not surpassing 7 years, and his Appeal is not determined in 1 year.

3. He or she is imprisoned for life or beyond 7 years and his Appeal is not adjudicated upon in 2 years.

The same section also provides that the above procedure will not apply if the convicted person has a bad track record, such that he is a hardened, desperate and dangerous criminal or terrorist.

Sub-section 2A lay down rules regarding the bail in case of bailable offences. This section said that if an individual is convicted of a bailable offence and an Appeal lies against the same conviction, then in that case, the convicted person can apply to the court for bail for the purpose of preparing himself for presenting an Appeal in the court. If he satisfies the court about his stance, then the court will grant him bail for that much of time as the court thinks fit and during this period of bail, his sentence shall be deemed suspended.

As per sub-section 2-B if the High court is convinced that a convicted individual has gained special permission to Appeal to the apex court of the country against any kind of punishment granted to him by the High court then the High court will suspend such verdict or order of it until the apex court so decide and if the convicted one is in jail, he will be freed on bail. Furthermore, if after all that suspension the petitioner is eventually sentenced to confinement, then time throughout which he was enjoying his freedom on bail will be omitted in estimating the time for which he was so convicted.

4.9.3. Arrest in appeal from acquittal (sec. 427)

This section lay down that in the event of Appeal against acquittal, per section 417-A (2) or 417, the High court has the discretionary power to release arrest warrant of the alleged offender and order the police to bring him afore the court. And now again, the court can commit him to jail till his Appeal is dealt with or release him on bail.

There is no statutory impediment for granting bail to a party against whose order of acquittal Appeal is preferred (State of Punjab v. Bachittar Singh etc., 1971). The true rule is that the party respondent in Appeal file by state against his discharge on main charges are mundanely qualified to be freed on bail throughout the time for which such Appeal was pending save for crucial and outstanding reasons the court can pass order of his detention (State of Punjab v. Bachittar Singh etc., 1971). In the given circumstances of the case, whether bailable or non-bailable arrest warrant is to be issued to secure the accused-respondent attendance is the matter which is to be decided by the court while exercising its discretionary powers. The court would consider the nature and gravity of the offence, the quality of evidence, contexts specific to the accused, the prospect of his fleeing, greater good of the populace and state (State v. Jagjit, 1962) etc.

4.9.4. Evidence by appellate court (sec. 428)

Section 428 empowers the court of Appeal to grab additional amount of evidence itself or instruct a sub-ordinate court to take the same for him. Sub-section 1 of the section lay down that if the court of Appeal believe that more evidence is required to clear things up, then the appellate court can order for taking further evidence. It can take additional evidence itself or it can also order the sub-ordinate court to take the same. However, before taking further evidence the appellate court has to write down its reasons for doing so. This means that if the court of Appeal considers it indispensable for adequate justice to consider further evidence, it can do so. In the related section, no words are limiting it only to those lis which have some formal flaw in it; this kind of matter lies in the discretion of the court of Appeal for deciding. (*Ajit v. Emperor,* 1946). No one has the right of producing any evidence in the appellate court at all. It is court that has to exercise its discretion in proper manner in the interest of justice (Barkat Ali alias Gharibu Etc. v. The Crown, 1969). The failure of the appellate court to record reasons does not invalidate proceedings unless omissions have caused a failure of justice (Miah v. Abdul Wahab, 1931).

In the section phrase "evidence to be necessary" is used. Here the word necessary does not mean that it is impossible to pronounce judgment without additional evidence. The need for taking evidence has to be evident from something on record and cannot be derived from e examination (Emperor v. Nga, 1903).

The manifest object of the section's provision is the stoppage of a guilty man's flight through some imprudent or nescient proceedings of a trial court or the exoneration of a virtuous person erroneously charged, where the court conducting trial through some negligence or lack of knowledge has failed to record evidence of the contexts vital for the clarification of the truth (State v. Jai prakas, 1959). The power under this section, however, must always be exercised with circumspection and the doing of justice should be the goal invariably aimed for (State v. Jai prakas, 1959). one crucial thing to be kept in mind is that power under this section should be exercised against an accused only in exceptional cases where formal defects have to be made up and not where the prosecutor intends to fill up the lacunae in the case (Kasmira Singh v. State, 1975) because there is an axiom which says that statute can be used as a shield but not as a sword. The appellate court should not admit additional evidence if the prosecution has failed to avail the opportunity given to it by the trial court for producing such evidence (Shiva Balak Rai v. State of Bihar, 1986).

According to sub-section 2 when the session court or magistrate take further evidence then the same will verify that evidence to the concerned court of Appeal and then appellate court based on the new evidence and old one proceeds further and will dispose of the case. Any court taking additional evidence on order of the appellate court must take the same when the accused or his lawyer is there. But there is an exception to this rule; according to subsection 3, if the court of Appeal orders that the accused or his lawyer will not be part of the setting in which additional evidence has been taken, then the court will proceed in their absence. This process of taking additional evidence will be treated as an inquiry in accordance with sub-section 4.

Additional evidence under section 428 can be taken for the prosecution and the accused and in Appeals both against conviction and acquittal (Rahjeshwar v. State of W.B., 1965). The High court, even in case of discharge, can admit additional evidence if considered necessary before setting aside the discharge order (*Ratilal v. State of Maharashtra,* 1971), refusal of the court of Appeal to take additional data and proof cannot be a ground for setting aside acquittal (*Maneshwar v. Jamuna,* 1963) because it is the choice of the court of Appeal to take any further amount of evidence or not. Besides that, the extra evidence required should be upon the grounds of guiltiness or innocence of the alleged offender (Ali Etc. v. Crown, 1952).

4.9.5. Procedure where judges are equally divided (sec. 429)

If a situation arises where a bench of two or more judges hears an Appeal and at the end they do not get to the same conclusion and become equally divided on the Appeal before them, such that in a bench of four judges 2 judges are of one mind and 2 of a different mind. Now, in this case what is to be done? This is the place where section 429 came into play and handle things.

Section 429 lay down the provision that if above-given scenario arises anywhere in court of Appeal then the same Appeal will be presented to a new judge of the similar appellate court. The new judge will hear the Appeal again and then give his decision/opinion; thus, it will break the tie between the bench of judges and as a result, order or judgment will follow the opinion of the latter.

Section 429 specifically used the word "OPINION" for the new judge. In this section, "opinion" meant nothing more or nothing less than the decision as the operative order to be passed in the case. It is not merely what may be called the inclination of the judges as to the view to be taken on the question arising in the case.

One can only say that judges are at odds in opinion if they are of different minds regarding the disposal of the lis (State of Orissa v. Minaketan

Patnaik, 1953). In case of different opinions between the bench judges the case is referred to another judge. Here, not only is that part of the case referred to the third judge on which the bench judges differ, but the whole case is referred (Sarat Chandra Mitra v. Emperor, 1911). If the judge is given only a limited number of facts to decide on only a specific point, he will definitely lead to an erroneous conclusion. After all, he is unaware of all the facts. But if he is provided with all the data of the case then he will be able to form a good and proper opinion.

Once the matter is forwarded to the new judge, he has the power to decide how the case will be heard by him. This is his discretion, then, and no previous judges can compel him to follow a particular pattern or way for doing so. As the verdict and the order will obey the view of the referee judge, he is free to resolve the difference as he considers appropriate; he can and will manage and handle the whole case (Babu v. State of U.P., 1965). The new judge has full power to deal with the full case and if he does so he does not overstep his jurisdiction (State of A.P. v. P.T.Appiah, 1981).

When a lis is handed over to a referee judge first of all he has to consider the opinions of the bench judges and then he will speak his own mind about the problem and base the judgment on his own opinion solely. The third judge must take into consideration the opinion of his fellows, and after that, he must spell out his mind on paper. The third judge is not bound to discuss the acquitting judge's outlook and signify the grounds for differing with the outlook of the acquittal judge (Dharam Singh v. State of U.P., 1946).

4.9.6. Abatement of Appeal (sec. 431)

The reduction in the degree or amount of something is generally called abatement. Section 431 talks about abatement of Appeal. It laid down that every Appeal under section 411-A (2) or 417 will conclusively abate when the accused expires. Moreover, Appeal other than the aforementioned will die away on the appellant's death except for Appeal against fine. However, a revision application filed in contrast to punishment of fine will not fade away because of the demise of the applicant.

A. Appeal from sentence of session court

According to section 410, if a person is convicted by the Court of Session then the convicted person can file an Appeal against the conviction in High court only. Only convicted person can file appeal under section mentioned supra (Mukamil Shah v. Sami Ullah, 2016). If a judgment is passed by the additional session's judge then it will be considered to be passed by the session's court and from that too Appeal will lie to the High court.

B. Appeal from sentence of high court

From lower judiciary Appeal lie to the High court. However, if High court deals a case in its original jurisdiction then where Appeal will lie against the High court decision? Section 411-A seems to answer this question. It lay down that if High court convicts a person while setting in its original capacity, then Appeal will lie to the High court (Appellate jurisdiction) in following cases,

1. If the Appeal against the conviction involves the matter of law only and no matter of fact is in question.
2. If the Judge who tried the case certifies with the appellate court's leave, that case is proper and suitable for Appeal. Such that the Appeal is sustainable on grounds which involves a factual issue only, or a mixed legal and factual issue (hybrid), or some other reasons which the above mentioned considered sufficient.
3. If the appellate court grants the leave, then Appeal against the punishment awarded can be made except for those sentences which is established and arranged by law.

Nevertheless, there is an exception to this provision; if an Appeal, under article 185, can be filed in Supreme Court, then Appeal will not be favored under this section to the High court.

Subsection 2 of the section authorize the Appeal against the decision of the High court if the provincial government directs the Public prosecutor to file an Appeal against the acquittal order made by the same court while using its trial court powers. It is also stated that the Provincial government can file an Appeal on both matters of facts and law.

C. Composition of court for such Appeal

Now it is clear that Appeal can be filed against the High court's decision passed in the application of its Original jurisdiction. However, how the same Appeal will be heard and by whom? Sub-section 3 of section 411-A clear the ways here. This sub-section lay down that for hearing such Appeal a division court of the high court will be established. This division court of High court must consist of 2 or more judges but not less than that. One more important thing is that those judges who heard the case in the capacity of original jurisdiction must not be part of the division court at the time of hearing such Appeal.

If, due to some reasons, the formation of such division bench is not practically possible, then the High court will send a report to the provincial government to the same effect. The provincial government will then take

proper steps for dispensation of justice and will exercise power given in section 527 of Cr.p.c to transfer the case to another High court.

Sub-section 4 of the same provision also states that an Appeal can also be made to the Supreme Court against the order of the division court of the High court if the same High Court pronounces that the lis is a proper one for Appeal. This provision is subject to the rules laid down by the Apex Court for that very purpose and the conditions that the High Court establishes.

D. Appeal in cases of acquittal (sec. 417)

Section 417 talks about Appeal in case of acquittal. Who can file and Appeal or within what time limit an Appeal can be filed against the acquittal? This very section answers all these questions. In the following two ways an Appeal against acquittal can be filed;

1. If the acquittal order is delivered by any court in any case except that passed by the High court, the provincial government can direct the public prosecutor, in any case it wishes, to file an Appeal to the High court against the order whether same is passed in original jurisdictional or appellate jurisdictional capacity. (Section 417, sub-section 1) The state has right of Appeal from an order of acquittal both on facts and law (Ghulam Muhammad v. Muhammad Sharif Etc., 1969; Abdur Rashid v. The State, 1971).
2. If the case is initiated by complaint and acquittal order is approved in it. Then the complainant forwards an application to the High court for permitting a special leave to Appeal, and the High court approved the same then, Appeal can be brought in this case by the complainant. (Section 417, sub-section 2)

As per this section Appeal can only be presented to the High court. The High court have the complete authority to re-examine the evidence which forms the base for acquittal order; but in order to reverse the verdict of the court of the first instance, there has to be some convincing and gripping reasons (Crown v. Mir Afzal, 1951; Ahmad v. Crown, 1951; Sharbat Khan v. Crown, 1955). Thus, weight has to be given to the findings of the trial court.

E. Scope of Appeal against acquittal

Appeal against acquittal is a hard nut to crack because the extent of Appeal from acquittal is very constricted and limited. One main and most prominent reason for this is that upon acquittal, the assumption of innocence is substantially added to the fundamental rule of criminal law that an accused

should be assumed to be innocent unless proven wrong; more simply, in case of acquittal that presumption is doubled.

As the presumption of acquittal became more firm and gained more root then court will be highly reluctant in meddling with such an acquittal decision, unless it is proven to be erroneous, approved in flagrant breach of law, suffering from mistakes of significant misinterpretation or non-reading of the evidence; such decision should not be easily disturbed and significant duty rests on the prosecution part to refute the assumption of innocence which the suspect has earned and achieved on virtue of his acquittal. Court of Appeal needs to take in mind that assumption of innocence of suspect is reinforced by his exoneration which is not to be lightly refuted (Mukhtar Ahmed Etc v. The State, 1994; Muhammad Asghar Etc v. The State, 1994).

Intervention in a verdict of acquittal is uncommon. The prosecution must establish that there are apparent legal and factual mistakes done by the judge in getting at the conclusion, which would result in a grievous perversion of justice. The appellate court shall not intervene purely for the reason that on reconsideration of the material, a different result could conceivably be reached at (Muhammad Zaman v. The State Etc., 2014), the factual findings ought not to be altered, unless when strikingly incorrect, suffering from substantial and significant factual flaws.

Supreme Court being the ultimate platform, would be cautious and reluctant to meddle in the decisions made by judges below (Ghulam Sikandar Etc. v. Mamaraz Khan Etc., 1985). Supreme Court observed that it is indeed expedient and vital that the foregoing criterion and the standards must be observed in determining these Appeals.

F. Time for filing an Appeal

Section 417 also lay down time limit for filing an Appeal in criminal cases of acquittal. Under this section right to Appeal against acquittal can be categorized into three categories.

Under section 417(1), it was exclusively the provincial government, which may authorize the public prosecutor to avail such legal remedy before the high court. For this category no period of limitation was prescribed, thus such Appeal would be regulated by article 157 of the Limitation act, 1908, which provided a limitation period of six months for presenting such Appeal.

Section 417(2-A) clearly lays down that If an individual is not pleased with the verdict of acquittal of any court other than that of High court then the aggrieved party can file an Appeal within 30 days against that order of acquittal.

In sub-section 2-A specifically, the phrase "Aggrieved party" is used. So for the purpose of pressing into service, said provision of law, the appellant had to prove that he was affected by order of the acquittal for any practical purpose. Merely because a person was remotely concerned about the result of acquittal, he could not be termed as an "aggrieved party" in legal sense unless he establishes before the court that his interests were directly jeopardized or injured in consequence of such Appeal (Mir Mumtaz Ali Talpur v. Allah Bukhsh Chandio Etc., 2006).

Per section 417(2), when an acquittal order was delivered in a case instituted upon a complaint, then the remedy of filing Appeal against such order in the form of special leave to Appeal had been conferred only to the complainant, which remedy, in terms of section 417(3), could be availed by him within 60 days.

In some cases, court converted time-barred Appeal into revision and heard it as revision (Sarwar v. The State, 1959; Muhammad Usman v. Habibullah, 1962). This is an exceptional scenario and happen in special cases and it totally depend on the will of the court whether to convert a time-barred appeal into revision or not. Besides this special scenario in time-barred appeal cases there also exists a special right of appeal which is to be discussed in the next section.

4.9.7. Special right of Appeal (sec. 415-A)

According to provisions of section 415-A, an accused person whose sentence is unappealable will have a right of Appeal if his co-accused has been given an Appealable sentence. But there are some conditions to be fulfilled before utilization of this section. These conditions are;

1. When more than one person is convicted
2. The number of persons sentenced must be convicted in the same trial.
3. At least one non-Appealable sentence is passed against one or more of the accused.
4. An Appealable sentence is passed against one or more persons so accused.

If all the above-given conditions are fulfilled, then a convicted person can file an Appeal against his non-Appealable sentence.

5. CONCLUSION

In general, Appeal is the process to cross-check and size up the decisions of the lower tier courts for the purpose of putting a clog on injustice and illegality. In criminal suits, the dispensation of justice goes to the very core

of *lis* and that is why the role of Appeal is also important in the arena of the criminal justice system.

Historically, the idea of Appeal can be traced back to the early civilization of Babylon. Besides that, traces of the same concept can also be found in ancient Rome and Japan. The modernized form of the concept of Appeal can be found in English and American recent history.

Right to Appeal is a statutory right but is not an inherent and natural right which means that it can only be bestowed upon a person if the law of the land directs so. As per Cr.p.c 1898 Appeal can be brought to the higher tier court concerning both question of law and question of facts. Appeal can be dismissed by the appellate court summarily if it is found that Appeal has no footing to stand on. On the other hand, if the court found some reasonable grounds in petition then Appeal will be heard further and the merits of the case be touched.

In the future, we need to work on the combination of theory and practice of Appeal. Because there are certain things that are not present in theory but is practically available beside that in practice theory is applied to a plethora of real situations which help us better understand the concept of Appeal as laid down in Code. Thus, further efforts are required to put theory and practice together for the sake of apprehension.

In a nutshell, Appeal is an integral part of the criminal suit. Appeal acts as one of the steps towards the attainment of justice, which is one of the core elements of the justice system and law. Thus, right of Appeal is fundamental statutory right of a party and must be used if a person feels aggrieved and think that injustice is done to him.

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