

All about Appeals under Code of Criminal Procedure

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Introduction-

It has been well said by **Mr. Wilt chamberlain** that “nobody is perfect”. The same is true with respect to the judges as well. Judgments by them are not infallible. There are chances of mistake and error being occurred despite all the provisions for ensuring a fair trial and a just decision. To make sure that the victim to the case do not suffer any harm and the society is not put into danger because of any sort of error or mistake by the judges concerned, the law provides for the provisions of appeal by which the cases concerned can be reheard by the higher court to provide every possible remedy to person aggrieved by the adjudication of the court.

Thus, the code of criminal procedure deals with the appeal under **Chapter 29** from **Section 372 to 394**.

Q1. What is an Appeal?

Ans- Appeal is basically a case that is filed to a superior court to make the correction in the decision of the inferior court.

As per Black law dictionary, an appeal is a complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the court above is called upon to correct or reverse.

Q2. What is the form in which the appeal is filed?

Ans- An appeal has to be filed in the form of petition in writing only. Section 382 talks about petition of appeal as-

“Every appeal shall be made in the form of a petition in writing presented by the appellant of his pleader and every such petition shall (unless the court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against”.

Q3. Does the victim have the right to prefer an appeal and what are the order against which it can be filed?

Ans-Yes, the victim has the right to go for an appeal. There are following orders against which the appeal can be filed:

1. Order acquitting the accused
2. Order convicting the accused for a lesser offence
3. Order imposing inadequate compensation

Q4. When are the appeals filed?

Ans- Appeals are filed in the following cases:

1. Appeals from conviction: where the accused is convicted and the trial is conducted by high court then an appeal would lie to the supreme court. But if the trial is held by the session judge or additional session judge or any other court in which a sentence of imprisonment passed is more than 7 years then an appeal would lie to the high court
2. Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behavior. —Any person, —
 - (i) who has been ordered under section 117 to give security for keeping the peace or for good behavior, or
 - (ii) who is aggrieved by any order refusing to accept or rejecting a surety under section 121,

may appeal against such order to the Court of Session:

Provided that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (4) of section 122.

3. Appeal by the state government against sentence: It is mentioned in the sec.377 of the CrPC that where the sentence passed by the court is inadequate then the state government or Central government can direct the public prosecutor to file an appeal

If the conviction is done by the court other than a high court then state government but if such conviction is in a case wherein the offence has been investigated by the Delhi special police establishment or any agency under any central act then Central government, can file the appeal-

- a) To the court of session, if the sentence is passed by the magistrate; and
- b) To the high court, if the sentence is passed by any other court

Q5. What are the cases in which the appeal is not filed?

Ans- They are as follows: -

1. No appeal to lie if not provided by law: It is a general rule that the appeal is filed only when it is provided by the law. Section 372 says that – “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”

2. No appeal in petty Cases-Sec. 376 says that there shall be no appeal by the convicted person if
 - (a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;
 - (b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;
 - (c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground—

- (i) that the person convicted is ordered to furnish security to keep the peace; or
- (ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or
- (iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

3. No appeal where the accused pleads guilty: -where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal, —

- (a) if the conviction is by a High Court; or
- (b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

Q6. What are the powers of the appellate court?

Ans-The Appellate court has the following powers: -

1. It has the power to dismiss the appeal if there is no sufficient ground for interfering in it
2. It may reverse the order of the acquittal and direct the further inquiry or retry the accused and pass the sentence in accordance with the law.
3. It may reverse, alter or maintain the order of conviction in an appeal
4. It may enhance the sentence by reversing, altering the finding or altering the nature of the sentence
5. It may make amendments, or any consequential or incidental order that may be just or proper.

Q7. What if the judges of the appellate court are equally divided?

Ans-This question has been dealt with by the section 392 of this Code according to which if the judges are divided in opinion equally then the matter shall be laid before another judge of that court whose decision shall be followed. But if one of the Judges constituting the Bench, or, where the appeal is laid before another Judge under this section, that Judge, so requires, the appeal shall be re-heard and decided by a larger Bench of Judges.

Q8. Are the judgment and the order of the appellate court final?

Ans- Yes, the judgment and the order of the appellate court are final except as provided in section 377, section 378, sub-section (4) of section 384 or chapter XXX:

Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits, —

- (a) an appeal against acquittal under section 378, arising out of the same case, or
- (b) an appeal for the enhancement of sentence under section 377, arising out of the same case

Q9. What are the cases when the appeal can be abated?

Ans-According to the section 394 of CrPC, an appeal is finally abated on the death of the accused except an appeal from a sentence of fine.

But where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation. —In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister

Q10. What if the appellant is in jail?

Ans- If the appellant is in jail then the petition of appeal can be presented by him to the officer in charge of the jail who has to forward the petition to the proper authority

Thereafter, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.