



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO(S). _____ OF 2026
(Arising out of SLP (Crl.) No(s). 13891/2025)

VISHNU KUMAR GUPTA **...APPELLANT(S)**

VERSUS

**STATE OF MADHYA PRADESH
AND ANR.** **...RESPONDENT(S)**

J U D G M E N T

ARAVIND KUMAR, J.

For the convenience of exposition, this judgment is divided into the following Chapters and Sub-Chapters:

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1. Heard. Leave Granted.

I. INTRODUCTION

2. The Appellant/ Accused¹ is before this Court challenging the judgment/order of the High Court of Madhya Pradesh at Gwalior Bench² dated: 11.07.2025 in Criminal Appeal No. 5615/2025, wherein the appeal filed by the Accused under Section 415 of Bharatiya Nagarik Suraksha Sanhita, 2023³ (Section 374 of the Code of Criminal Procedure, 1973⁴) came to be dismissed on the ground of maintainability. The Accused/Appellant i.e. Vishnu Kumar Gupta was the legally wedded husband of the Complainant/Respondent No.2 i.e. Smt. Shilpi Gupta⁵, who had lodged Zero FIR under Sections 498-A, 323, 34 of Indian Penal Code⁶ and Sections 3 and 4 of Dowry Prohibition Act, 1961, against the accused, the mother of the accused and the father of the accused before Police Station Lasudia, Indore. After the Zero FIR was transferred to jurisdictional Police Station the

¹ Hereinafter referred to as ‘the Accused’ or ‘the Appellant’ or ‘the Husband’.

² Herein after referred to as ‘the High Court’.

³ Hereinafter referred to as ‘the BNSS’

⁴ Hereinafter referred to as ‘the CrPC’.

⁵ Hereinafter referred to as ‘the Complainant’ or ‘the Respondent’ or ‘the Wife’.

⁶ Hereinafter referred to as ‘the IPC’

same came to be registered as FIR No.32 of 2020 by the Kotwali, Police Station, District Bhind, State of M.P. After the investigation was completed, the police filed a chargesheet against the accused persons before Judicial Magistrate First Class, Bhind, District Bhind. The Court of Judicial Magistrate First Class⁷ (Trial Court), after the trial and upon appreciation of the evidence on record vide judgment and order dated: 20.12.2024, acquitted all the Accused Persons. The complainant, filed a Criminal Appeal in Criminal Appeal No. 3/2025 before the Seventh Additional Sessions Judge, District Bhind⁸ under Section 419 BNSS (Section 378 Cr.P.C.). On re-appreciation of the evidence, the Sessions Court vide Judgment and Order dated: 27.05.2025 dismissed Appeal in so far as the mother and father of the Appellant. However, the Sessions Court convicted the Appellant herein under Section 498-A of IPC and Section 4 of the Dowry Prohibition Act and sentenced him to undergo rigorous imprisonment for a period of 3 years under Section 498A of IPC and 2 years of rigorous imprisonment under Section 4 of Dowry Prohibition Act along with a fine of Rs. 10,000 each and the sentences were ordered to run separately. Challenging the above conviction,

⁷ Here in after referred to as ‘the Trial Court’

⁸ Here in after referred to as ‘the Sessions Court’

the Appellant filed an Appeal before the High Court under Section 415 of the BNSS, 2023 (Section 374 of Cr.P.C.), the High Court on a thorough examination of the provisions of the Cr.P.C. as well as BNSS, vide impugned order dismissed the criminal appeal filed by the Appellant on the ground that only a Revision Petition is maintainable and not a criminal appeal challenging conviction as it would amount to 2nd appeal which is not provided under the provisions of the Cr.P.C. or the BNSS. Challenging the above order, the Appellant is before this Court. The question that arises before us in the given factual matrix is *‘Whether an appeal under Section 374 of the Code of Criminal Procedure, 1973 (corresponding to Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is maintainable against a judgment of conviction recorded by a Sessions Court while exercising appellate jurisdiction and reversing an order of acquittal passed by a Trial Court?’*

II. BRIEF FACTS:

3. Though the facts in brief have been reproduced above, for the purposes of completion, the same are reiterated below:

3.1. The marriage between the Appellant, Vishnu Kumar Gupta, and Respondent No. 2 was solemnized on 01.02.2013 at Vidisha, Madhya Pradesh. Following the

marriage, the couple shifted to the United States, where they resided together and were blessed with a son, Agastya, on 14.02.2015. According to the record and as per the Appellant, the Appellant bore the family's expenses, including those relating to the respondent's travel, pregnancy, and delivery. In March 2018, Respondent No. 2 travelled to India with the minor child on the pretext of attending her brother's wedding but allegedly she did not return to the matrimonial home thereafter, resulting in the parties living separately.

3.2. The matrimonial relationship subsequently deteriorated, with each side attributing the breakdown to the other. The complainant alleged that she was subjected to cruelty, harassment, physical assault, and persistent demands for dowry by the Appellant and his family members during the subsistence of the marriage. These allegations culminated in the registration of a Zero FIR on 19.01.2020 at Police Station Lasudia, Indore, for offences under Sections 498-A, 323 read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The FIR was thereafter transferred to the competent jurisdiction

at Police Station City Kotwali, Bhind, where it was registered as FIR No. 32 of 2020.

3.3. Following registration of the FIR, the investigating agency recorded the statements of the complainant and other material witnesses and conducted the investigation into the allegations of matrimonial cruelty, physical assault, and dowry demand. Upon completion of the investigation, the police concluded that sufficient material existed to proceed against the accused persons and accordingly filed a charge sheet before the Court of the Judicial Magistrate First Class, Bhind. The criminal case was registered as RCT No. 2176 of 2020, where the accused were required to face trial for the offences alleged in the FIR.

3.4. The charge sheet specifically arraigned the Appellant, his father, and his mother as accused, alleging that they had acted in furtherance of a common intention in subjecting the complainant to cruelty in connection with unlawful dowry demands and had voluntarily caused hurt to her. On the basis of the evidence collected during investigation, the prosecution sought to prosecute the accused for offences punishable under Sections 498-A and 323 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry

Prohibition Act, 1961, asserting that the allegations disclosed is a continuing course of matrimonial harassment involving all the accused family members.

3.5. Consequently, cognizance was taken on the police report, and the matter proceeded to trial before the Judicial Magistrate First Class, Bhind. The filing of the charge sheet formed the foundation of the prosecution case by attributing distinct as well as collective acts of cruelty and dowry harassment to the Appellant and his parents, thereby requiring them to stand trial for the aforementioned offences. The subsequent criminal proceedings arose entirely from the allegations contained in the FIR and the material collected during investigation, as incorporated in the charge sheet.

4. The Judicial Magistrate First Class, Bhind, after a full-fledged trial in RCT No. 2176 of 2020, acquitted the Appellant and his family members of all charges under Sections 498-A, 323 read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act. The Trial Court held that the prosecution had failed to establish the allegations of dowry demand, cruelty and physical assault beyond reasonable doubt. It found material inconsistencies and omissions in the testimony of the complainant, including the improbability of the alleged dowry demands, the absence of

contemporaneous complaints despite opportunities to do so, and the lack of reliable corroborative evidence. Concluding that the prosecution version did not inspire confidence and that the evidence fell short of the standard required for conviction, the Trial Court acquitted all the accused by a reasoned judgment dated 20.12.2024.

- 5.** Aggrieved by the acquittal, the complainant preferred an appeal before the Sessions Court under Section 419 BNSS (corresponding to Section 378 Cr.P.C.). By judgment dated 27.05.2025 in Criminal Appeal No. 3/2025, the Seventh Additional Sessions Judge, Bhind, partly allowed the appeal by reversing the acquittal insofar as the Appellant was concerned. The appellate court convicted the Appellant for offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, while affirming the acquittal of his parents. The Sessions Court re-appreciated the evidence, accepted the complainant's version regarding matrimonial cruelty and dowry harassment, and imposed substantive sentences, directing that the terms of imprisonment would run separately (consecutively). The conviction recorded by the Sessions Court constituted the Appellant's first conviction, as he had been acquitted by the Trial Court. Challenging the conviction, the Appellant filed an Appeal

before the High Court under Section 374 Cr.P.C. (Section 415 BNSS).

- 6.** The High Court by its judgment dated 11.07.2025 in Criminal Appeal No. 5615 of 2025, did not examine the merits of the Appellant's conviction but dismissed the appeal solely on the ground of maintainability. The principal issue before the Court was whether an appeal under Section 374 of the Code of Criminal Procedure, 1973 (corresponding to Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is maintainable against a judgment of conviction recorded by a Sessions Court while exercising appellate jurisdiction and reversing an order of acquittal passed by the Trial Court. The High Court framed this as a pure question of law concerning the availability of a statutory remedy against a first-time appellate conviction.

- 6.1.** Upon interpreting Section 374 Cr.P.C./Section 415 BNSS, the High Court held that the statutory right of appeal is confined to convictions recorded by a court in the exercise of its original trial jurisdiction and does not extend to convictions recorded by a Sessions Court while deciding an appeal against acquittal. Relying upon the decisions of the Karnataka High Court in *Jayanthilal Dave v. State Assistant Drug Controller*

*Mysore*⁹ and the Madras High Court in *Purushoth and Others v. Jayabal and Others*¹⁰, the Court concluded that no second statutory appeal is contemplated against such an appellate conviction and that the appropriate remedy would be to invoke the High Court's revisional jurisdiction. The Court reiterated that the right of appeal is a creation of statute and cannot be inferred in the absence of an express legislative provision.

6.2. The High Court further held that the appeal was also hit by Rule 48 of Chapter X of the Madhya Pradesh High Court Rules, 2008, as the Appellant had not surrendered after his conviction by the Sessions Court. Holding that both the absence of a statutory right of appeal and the Appellant's failure to surrender rendered the proceedings non-maintainable, the High Court dismissed the criminal appeal at the threshold without entering into the correctness of the findings of conviction or re-appreciating the evidence on record. Consequently, the judgment of conviction and sentence passed by the Sessions Court remained undisturbed.

⁹ ILR 2010 KAR 3103.

¹⁰ AIR Online 2022 MAD 1046.

- 7.** It is this judgment of the High Court which is challenged before this Court.

III. SUBMISSIONS OF THE PARTIES

- 8.** Learned Counsel, Mr. A Velan, appearing for the Appellant contended as follows:

8.1. The Appellant contends that the High Court committed a fundamental error in dismissing his appeal as not maintainable despite the fact that the Sessions Court had convicted him for the first time by reversing a judgment of acquittal. According to the Appellant, the appeal before the High Court was not a "second appeal" but the first effective appeal against his conviction, and denial of such an appeal deprives him of a substantive statutory right as well as the constitutional guarantee of fair procedure envisaged under Article 21. It is argued that High Court had adopted an unduly narrow interpretation of Section 374 Cr.P.C. (now Section 415 BNSS) by confining it only to convictions recorded by a trial court, thereby extinguishing the Appellant's first opportunity to challenge his conviction on facts and law.

8.2. The Appellant further submits that High Court erroneously equated the remedy of criminal revision

with that of a criminal appeal. It is argued that a revision is a limited supervisory remedy confined primarily to jurisdictional and legal errors, whereas a first appeal against conviction carries a vested right to a complete re-appreciation of evidence. Since the Appellant was acquitted by the Trial Court and convicted only by the Sessions Court in appeal, the presumption of innocence continued until the appellate conviction, entitling him to one full appellate scrutiny before his conviction attained finality. In support of this proposition, reliance is placed upon *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Another*¹¹, *Babu Rajirao Shinde v. State of Maharashtra*¹², *Kamlesh Prabhudas Tanna and Another v. State of Gujarat*¹³, and *Nagarajan v. State of Tamil Nadu*¹⁴, which emphasize that the right of appeal against conviction is a substantive and valuable safeguard of personal liberty.

8.3. The Appellant also challenges the reliance placed by the High Court on Rule 48 of Chapter X of the Madhya Pradesh High Court Rules, 2008, contending that a

¹¹ (2007) 6 SCC 528.

¹² (1971) 3 SCC 337.

¹³ (2013) 15 SCC 263.

¹⁴ (2025) 8 SCC 331.

procedural rule cannot curtail a substantive statutory remedy or override Article 21 of the Constitution of India. It is argued that requirement of surrender before entertaining an appeal is merely procedural and cannot be used to deny the right of appeal itself. The Appellant points out that the validity of Rule 48 is already under challenge and further relies upon the decision of the Madhya Pradesh High Court in *Narendra Sharma v. State of Madhya Pradesh*¹⁵, wherein exemption from surrender was granted in exceptional circumstances. The Appellant submits that his case, involving employment in the United States and serious civil consequences flowing from conviction, warranted similar protection.

8.4. In support of his interpretation of the appellate remedy, the Appellant relies extensively upon constitutional and precedential principles. He would rely upon the judgment of this Court in *Maru Ram v. Union of India and Others*¹⁶ to contend that an appellate conviction relates back to and substitutes the trial court's judgment, thereby reinforcing that the conviction by the Sessions Court constitutes the first conviction in

¹⁵ Criminal Revision No. 426 of 2025 before the High Court of Madhya Pradesh at Gwalior.

¹⁶ (1981) 1 SCC 107.

law. Reliance is also placed upon *Garikapati Veeraya v. N. Subbiah Choudhry*¹⁷ to argue that the right of appeal is a vested substantive right, *Bhavya Apparels (P) Ltd. and Another v. Union of India and Another*¹⁸ to submit that statutory conditions cannot destroy the right of appeal, and *Arun Sharma v. State of Himachal Pradesh*¹⁹ to demonstrate that High Courts have converted revisions into appeals in order to preserve an accused's valuable first appellate remedy. The Appellant thus contends that the High Court's interpretation is inconsistent with established criminal jurisprudence favouring preservation, rather than extinction, of appellate rights.

8.5. It is further submitted that the expression employed in Section 374 Cr.P.C. is "*convicted on a trial*" and not "*convicted in the trial*". The legislative choice of the preposition "*on*" is deliberate and cannot be rendered otiose by reading it as "*in*". The expression "*on a trial*" denotes a conviction founded upon, or arising out of, a trial, without confining the conviction to the court

¹⁷ 1957 SCC OnLine SC 28.

¹⁸ (2007) 10 SCC 129.

¹⁹ Criminal Revision No. 467 of 2019 along with Criminal Revision Nos. 468 to 472 of 2019 before the High Court of Himachal Pradesh at Shimla.

which conducted the trial. Thus, where an accused is acquitted by the trial court but is convicted for the first time by the appellate court upon re-appreciation of the evidence recorded during the same trial, such conviction is nevertheless one rendered "*on a trial*", as it is intrinsically founded upon and flows from the trial conducted by the court of first instance. He would contend that the Legislature intended to restrict the scope of Section 374 only to convictions recorded by the trial court itself, it would have employed the expression "*convicted in the trial*" or other restrictive language. The use of the words "*on a trial*", therefore, manifests a wider legislative intent to encompass every conviction founded upon a criminal trial, irrespective of whether such conviction is recorded by the trial court or by the appellate court exercising appellate jurisdiction.

8.6. In the rejoinder affidavit, the Appellant specifically refutes the respondents' contention that he is seeking remedy in a "*second appeal*." He reiterates that the proceedings before the High Court represented his first and only effective appeal against his conviction, which arose only because the Sessions Court reversed his acquittal. The Appellant maintains that the respondents

have fundamentally misunderstood the nature of the statutory remedy and that the insistence on treating the matter as a second appeal defeats both legislative intent and settled criminal jurisprudence. The rejoinder further reiterates that the right to appeal following a first-time conviction cannot be denied through a restrictive interpretation of the Cr.P.C. or BNSS.

8.7. Lastly, the Appellant rejects the respondents' reliance upon Rule 48 and the allegation that he deliberately avoided surrender. He asserts that he has consistently pursued his legal remedies before the appropriate courts and has sought exemption from surrender in accordance with law. The rejoinder emphasizes that subordinate procedural rules must yield to substantive statutory rights and constitutional guarantees under Article 21, particularly where denial of an appeal would result in irreversible prejudice to personal liberty. It is further stated that the rejoinder introduces no new grounds but merely elaborates upon the submissions advanced before the High Court and reinforces them through binding precedents and the compendium of judgments filed along with the petition.

9. Shri. Rajan Chourasia Ga, Learned Counsel appearing for the State contended as follows:

9.1. Respondent No. 1/State contends that the High Court rightly dismissed the Appellant's criminal appeal as not maintainable, as neither the Code of Criminal Procedure, 1973 nor the Bharatiya Nagarik Suraksha Sanhita, 2023 contemplates a second statutory appeal against a judgment of conviction rendered by a Sessions Court in exercise of its appellate jurisdiction. It is submitted that Section 374 Cr.P.C. (Section 415 BNSS) permits an appeal only against convictions recorded by a court exercising original trial jurisdiction and does not extend to convictions recorded while deciding an appeal against acquittal. According to the State, the Appellant's remedy, if any, lay only in invoking the revisional jurisdiction of the High Court, and the High Court correctly declined to entertain a criminal appeal in the absence of an express statutory provision. The State further argues that the right of appeal is purely a creation of statute and cannot be expanded through judicial interpretation merely because the Appellant has been convicted for the first time. In support of this proposition, reliance is placed upon the Karnataka High Court decision in *Jayanthilal*

Dave v. State Assistant Drug Controller (supra), which held that no appeal lies under Section 374 Cr.P.C. against a conviction recorded by the Sessions Court while reversing an acquittal, and upon the Madras High Court decision in *Purushoth and Others v. Jayabal and Others (supra)*, which adopts the same interpretation.

9.2. The State also supports the High Court's reliance upon Rule 48 of Chapter X of the Madhya Pradesh High Court Rules, 2008, contending that the Appellant had admittedly not surrendered after the Sessions Court recorded his conviction and sentence. It is argued that compliance with the surrender requirement is a mandatory precondition for entertaining such proceedings and that the Appellant's failure to surrender rendered the appeal incompetent. The State relies upon this Court's order in *Daulat Singh v. State of Madhya Pradesh*²⁰ to contend that exemption from surrender is not a matter of right and submits that no exceptional circumstances existed in the Appellant's case warranting relaxation of the Rule. Accordingly, the State maintains that the High Court correctly rejected the appeal both on the ground of absence of

²⁰ SLP(Crl.) No. 10183/2024.

statutory maintainability and on account of non-compliance with the procedural requirement of surrender.

10. Sri. Sankalp Sharma, Learned Counsel for the Complainant contended as follows:

10.1. Respondent No. 2/Complainant substantially adopts the submissions advanced by the State and contends that the Appellant is, in substance, seeking recognition of a second appeal, which the criminal procedural law does not provide. It is submitted that once the complainant's appeal against acquittal was allowed by the Sessions Court under Section 378 Cr.P.C./Section 419 BNSS, the conviction recorded by the appellate court attained the character of a final appellate judgment, against which only the revisional jurisdiction of the High Court could be invoked. According to the complainant, the Appellant's attempt to characterize the proceedings as a "first appeal" is contrary to the statutory scheme governing criminal appeals. Respondent No. 2 relies upon *Jayanthilal Dave v. State Assistant Drug Controller (Supra)*, *Purushoth v. Jayabal (Supra)*, and this Court's order in *Daulat Singh v. State of Madhya Pradesh (Supra)*, all of which, according to the respondent, recognize

that no statutory appeal lies against a conviction recorded by a Sessions Court while exercising appellate powers.

10.2. The complainant further submits that the Appellant cannot invoke constitutional principles to create an appellate remedy where none exists under the statute. It is argued that the right of appeal being entirely statutory, Article 21 cannot be relied upon to override the express legislative scheme. Respondent No. 2 also disputes the Appellant's challenge to Rule 48, contending that the requirement of surrender is mandatory and uniformly applicable to convicted persons approaching the High Court. The counter affidavit therefore prays for dismissal of the Special Leave Petition, asserting that the High Court correctly interpreted the statutory provisions, faithfully followed the precedents governing maintainability, and committed no error warranting interference under Article 136 of the Constitution.

11. Having heard the Learned Counsels appearing for the parties and after perusal of the record available, the following question arises for consideration:

I. 'Whether an appeal under Section 374 of the Code of Criminal Procedure, 1973

(corresponding to Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is maintainable against a judgment of conviction recorded by a Sessions Court while exercising appellate jurisdiction and reversing an order of acquittal passed by a Trial Court?’

IV. STATUTORY FRAMEWORK

12. In order to adjudicate the point formulated hereinabove, it would be apposite to note the relevant provisions under Cr.P.C. and BNSS which governs the filing of the appeal, revision and the powers exercisable by the appellate court and revisional court. The same is appended as *Annexure I* to this Judgment.

V. THE SETTLED PRINCIPLES

13. Before proceeding to answer the issue raised in the present case, it is important for us to reiterate few of the settled Principles of law which are necessary for the adjudication of the issue at hand. The settled principles of law are:

V.1. Appeal: A creature of Statute,

V.2. The meaning of the word ‘Trial’ in the Code of Criminal Procedure.

V.1. APPEAL: A CREATURE OF STATUTE

14. It is a well-settled principle of law that the right of appeal is a creature of statute. In the absence of a specific statutory provision conferring such a right, no party can maintain an appeal. This principle finds statutory recognition in Section 372 of Cr.P.C., and its corresponding provision under the BNSS, namely Section 413. Both provisions further stipulate that a victim may prefer an appeal against an order of acquittal before the Court which is competent to entertain an appeal against the order of conviction passed against the accused. In the case of *National Commission for Women v. State of Delhi and Another*²¹, this Court held as follows:

“8. Chapter XXIX of the Code of Criminal Procedure deals with "Appeal"(s). Section 372 specifically provides that no appeal shall lie from a judgment or order of a Criminal Court except as provided by the Code or by any other law which authorizes an appeal. The proviso inserted by Section 372 (Act 5 of 2009) w.e.f. 31st December, 2009, gives a limited right to the victim to file an appeal in the High Court against any order of a Criminal Court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. The proviso may not thus be applicable as it came in the year 2009 (long after

²¹ (2010) 12 SCC 599.

the present incident) and, in any case, would confer a right only on a victim and also does not envisage an appeal against an inadequate sentence. An appeal would thus be maintainable only under Section 377 to the High Court as it is effectively challenging the quantum of sentence.

..XXXXXX...

11. *An appeal is a creature of a Statute and cannot lie under any inherent power.* This Court does undoubtedly grant leave to the appeal under the discretionary power conferred under Article 136 of the Constitution of India at the behest of the State or an affected private individual but to permit anybody or an organization *pro-bono publico* to file an appeal would be a dangerous doctrine and would cause utter confusion in the criminal justice system. We are, therefore, of the opinion that the Special Leave Petition itself was not maintainable.”

15. This Court in the case of *Mallikarjun Kodagali (dead) represented through legal representatives v. State of Karnataka and Others*²² held that the Accused has the substantive right to file an Appeal, and it should not be easily recognised unless specifically conferred by a Statute. This Court in the recent case of *Parvinder Kansal v. State (NCT of Delhi) and Another*²³ held as follows:

“8.It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any

²² (2019) 2 SCC 752.

²³ (2020) 19 SCC 496.

other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable....”

- 16.** A plain reading of the statutory provisions governing appeals makes it abundantly clear that the legislature has consciously delineated both the circumstances in which an appeal may be preferred and the forum before which such appeal shall lie. The appellate forum is determined strictly in accordance with the statutory scheme, and the jurisdiction of the appellate court cannot be expanded or modified by implication. The right to invoke appellate jurisdiction, as well as the forum before which such right may be exercised, must therefore be traced solely to the express provisions of the statute.
- 17.** It is equally well settled that a provision conferring a right of appeal is required to be construed strictly. The Courts cannot, on considerations of equity, convenience, or perceived legislative omission, read into the statute a right of appeal or an appellate forum which has not been expressly provided by the legislature. Any interpretation that creates or enlarges a substantive right of appeal beyond the statutory framework would amount to judicial legislation, which is impermissible in law.
- 18.** Therefore, unless there exists an express statutory provision conferring a right of appeal upon a person, no appeal can be

maintained. Such a right cannot be assumed or inferred by adopting an erroneous or expansive interpretation of the provisions of the Code.

V.2. THE MEANING OF THE WORD 'TRIAL' IN THE CODE OF CRIMINAL PROCEDURE

19. As the provisions contained in the Chapter relating to appeals under the Code employ the expression "trial" at several places, it becomes necessary to ascertain its precise meaning. In particular, since the expression "trial" is used in Section 374 of the Cr.P.C., it is imperative to examine its scope in the context of the said provision, including the stage at which a trial commences and the point at which it can be said to have concluded. In this regard, we shall examine certain judicial pronouncements which have endeavoured to define the expression "trial" and to determine the stages marking its commencement and conclusion. At the outset, however, it is necessary to clarify that the expression "trial" also occurs in several other provisions of the Cr.P.C., albeit in different contexts. Consequently, the meaning attributed to the expression in one provision cannot be mechanically imported into another. The expression "trial" is inherently contextual and must be construed in a manner that advances the object and

purpose of the particular provision in which it occurs, upon a holistic reading thereof.

20. This Court, in the case of *State of Bihar v. Ram Naresh Pandey and Another*²⁴, in the context of Section 494 of Cr.P.C., has held the following regarding the meaning of the word 'trial' occurring in that provision:

“13. The whole argument of the learned counsel is based upon the use of the word 'tried' and he emphasises the well-known distinction between 'inquiry' and 'trial' in the scheme of the Code. Our attention has also been drawn to the definition of the word 'inquiry' in s. 4(k) of the Code which runs as follows :

"'Inquiry' includes every inquiry other than a trial conducted under this code by a Magistrate or Court."

There is hardly anything in this definition which throws light on the question whether the word 'trial' is used in the relevant section in a limited sense as excluding an inquiry.

14. The word 'trial' is not defined in the Code. 'Trial' according to Stroud's Judicial Dictionary means "the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal" [Stroud's Judicial Dictionary, 3rd Ed., Vol. 4, p. 3092.] and according to Wharton's Law Lexicon means "the hearing of a cause, civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land" [Wharton's Law Lexicon, 14th Ed., p. 1011.]. The words 'tried' and 'trial' appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our

²⁴ AIR 1957 SC 389.

attention has been drawn the words 'tried' and 'trial' have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration.

18.It may also be mentioned that the word 'inquiry' and 'trial' were both defined in the Code of 1872 but that the definition of the word 'trial' was omitted in the 1882 Code and that later on in the 1898 Code the definition of the word 'inquiry' was slightly altered by adding the phrase "other than a trial" leaving the word 'trial' undefined. These various legislative changes from time to time with reference to s. 494 and the definition of the word 'inquiry' confirm the view above taken that s. 494 is wide enough to cover every kind of inquiry and trial and that the word 'trial' in the section has not been used in any limited sense. Substantially the same view has been taken in *Giribala Dasee v. Madar Gazi* [[1932] I.L.R. 60 Cal. 233.] and *Viswanadham v. Madan Singh* [I.L.R. [1949] Mad. 64.] and we are in agreement with the reasoning therein as regards this question.”

21. Again, in the case of *V. C. Shukla v. State through C.B.I.*²⁵, this Court interpreting the provisions of the Special Courts Act, 1979 held as follows:

“36. The last argument advanced by the learned counsel for the appellant, which also appears to be very attractive, is that accepting the theists referred to

²⁵ 1980 SCC CrI. 695.

above and applying to the facts of the present case, the order impugned should be construed as a final order inasmuch as the order completely terminates the proceedings preceding the trial. In other words, it was contended that until the charge is actually framed the trial does not start and all proceedings up to the framing of the charges are in the nature of an inquiry or a sort of a pre- trial proceeding which finally culminates either in the order of discharge or in the order framing of charges. Thus, in any event, an order framing charges must necessarily be held to be a final order and not, an interlocutory one. In support of this contention the learned counsel relied on a decision of a Full Bench of the Jammu & Kashmir High Court in the case of State v. Ghani Bandar in which the leading judgment was delivered by one of us (Fazal Ali J.).

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37. This decision, however, in our opinion, does not appear to be of any assistance to the appellant for the reasons that we shall give here after. In the first place, the decision was rendered not on the provisions of the Code of 1973 but under the provisions of the Criminal Procedure Code of the Jammu & Kashmir State which were quite different from the provisions of the Code of 1973 which does not apply to that State. Secondly, it would appear that the Criminal Procedure Code of 1872 (Act X of 1872) expressly contained a definition of the word trial which was defined thus:

"Trial" means the proceedings taken in Court after a charge has been drawn up, and includes the punishment of the offender:

It includes the proceedings under chapters XVI and XVIII, from the time when the accused appears in Court."

Thus, the word 'trial' clearly meant the proceedings after charges had been drawn up and included even the punishment of the offender. Furthermore, the

definition was wide enough even to include proceeding right from the time when the accused appeared in Court to the culmination of the proceedings. This definition is to be found in s. 4 of the Act X of 1872. The said Act defined 'inquiry' thus:

"Inquiry" includes any inquiry which may be conducted by a Magistrate or Court under this Act."

38. Both the definition of the word 'trial' as also that of 'inquiry' underwent a radical change in the Code of 1898. The Code of 1898 completely dropped the definition of the word 'trial' and instead widened the definition of the term 'inquiry'. Under s. 4(j) of the Code of 1898, 'inquiry' was defined thus:

"Inquiry"- "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court."

Thus, the position was that under the Code of 1898, trial was not defined at all but all proceedings except the trial were held to be inquiry within the meaning of s. 4(j). So far as the Code of 1973 is concerned, with which we are dealing, while the definition of inquiry is retained, trial has not been defined at all. In the instant case, s. 9(1) of the Special Courts Act clearly provides that the Special Court shall follow the procedure prescribed by the Court for trial of warrant cases before a Magistrate. Let us examine the position and the various aspects of the procedure laid down for the trial of warrant cases under the Code as also under the Code of 1898, as amended in 1955. So far as the decision of the J&K High Court, referred to above, is concerned it was given under the Criminal Procedure Code of Jammu & Kashmir prior to the amendment of 1955 which, though passed by the State Legislature, was enforced sometime after 1964. Prior to the amendment of 1955, under the Code of 1898, the procedure for trial of warrant cases by a

Magistrate was the same whether the case was instituted on a police report or otherwise than on a police report. The procedure is found in the unamended ss. 251 to 254 onwards which may be extracted thus:

"251.....254..."

39. It is therefore, clear that under the provisions extracted above, There was no question of the trial starting until the charges were framed because under s. 252 when the accused appeared or was brought before the Magistrate, the Magistrate had to hear the complainant and take evidence as may be produced by him. After summoning the witnesses under s. 252(2), the Magistrate had to take the evidence and after examining the same he had to determine whether a case was made out by the prosecution which, if unrebutted, would warrant the conviction of the accused. If the Magistrate was of the opinion from the examination of the evidence taken at the earlier stage that the accused had committed an offence triable under the said Chapter, then only charge was to be framed..... For these reasons, therefore, we are satisfied that the proceedings starting with s. 238 of the Code including any discharge or framing of charges under s. 239 or s. 240 amount to a trial. the question of a pre-trial, as suggested by the counsel for the appellant, does not arise on a plain interpretation of the language of ss. 238 and 239 which were the same as s. 251A under the Code of 1898 as amended by the Act of 1955."

22. In the context of the Army Act, 1950, this Court in the case of *Union of India and Others v. Major General Madan Lal*

*Yadav (Retd.)*²⁶ gave a contextual definition to the word 'trial commenced' appearing in that Act and held:

"13. The words "trial commences" employed in Section 123 [2] shall be required to be understood in the light of the scheme of the Act and the Rules. The question is as to when the trial is said to commence? The word 'trial' according to Collins English Dictionary means:

"the act or an instance of trying or proving; test or experiment... Law. a. the judicial examination of the issues in a civil or criminal cause by a competent tribunal and the determination of these issues in accordance with the law of the land. b. the determination of an accused person's guilt or innocence after hearing evidence for the prosecution and nor the accused and the judicial examination of the issues involved".

14. According to Ballentine's Law Dictionary [2nd ed.] 'trial' means:

"an examination before a competent tribunal according to the law of the land, of the facts or law put in issue in a cause, for the purpose of determining such issue. When a court hears and determines any issue of fact or law for the purpose of determining the right of the parties, it may be considered a trial"

15. In Block's Law Dictionary [Sixth Edition] Centennial Edition, the word 'trial' is defined thus:

"A judicial examination and determination of issues between parties to action, whether they be issues of law or of fact, before a court that has jurisdiction... A judicial examination, in

²⁶ (1996) 4 SCC 127.

accordance with law of the land, of a cause, either civil or Criminal, of the issues between the parties, whether of law or facts, before a court that has proper jurisdiction".

16. In Webster's Comprehensive Dictionary International Edition, at page 1339, the word 'trial' is defined thus:

"...The examination, before a tribunal having assigned jurisdiction, of the facts or law involved in ail issue in order to determine that issue. A former method of determining guilt or innocence by subjecting the accused to physical tests of endurance, as by ordeal or by combat with his accuser... In the process of being tried or tested... Made or performed in the course of trying or testing..."

17 to 18.....

19. It would, therefore, be clear that trial means act of proving or judicial examination or determination of the issues including its own jurisdiction or authority in accordance with law or adjudging guilt or innocence of the accused including all steps necessary thereto. The trial commences with performance of the first act or steps necessary or essential to proceed with trial.

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27. Our conclusion further gets fortified by the scheme of the trial of a criminal case under the Code of Criminal Procedure, 1973, viz., Chapter XIV "Conditions requisite for initiation of proceedings" containing Sections 190 to 210, Chapter XVIII containing Sections 225 to 235 and dealing with "trial before a Court of Sessions" pursuant to committal order under Section 209 and in Chapter XIX "trial of warrant-cases by Magistrates" containing Sections 238 to 250 etc. It is settled law that under the said

Code trial commences the moment cognizance of the offence is taken and process is issued to the accused for his appearance etc. Equally, at a Sessions trial, the court considers the committal order under Section 209 by the Magistrate and proceeds further. It takes cognizance of the offence from that stage and proceeds with the trial. The trial begins with the taking of the cognizance of the offence and taking further steps to conduct the trial.”

23. In “*Common Cause*”, *A Registered Society through its Director v. Union of India and Others*²⁷ this Court held as follows:

“II. The phrase “*pendency of trials*” as employed in paras 1(a) to 1(c) and the phrase “*non-commencement of trial*” as employed in paras 2(b) to 2(f) shall be construed as under:

(i) In cases of trials before the Sessions Court the trials shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure, 1973 in the cases concerned.

(ii) In cases of trials of warrant cases by magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the accused concerned under Section 246 of the Code of Criminal Procedure, 1973.

²⁷ (1996) 6 SCC 775.

(iii) In cases of trials of summons cases by magistrates the trials would be considered to have commenced when the accused who appear or are brought before the magistrate are asked under Section 251 whether they plead guilty or have any defence to make.”

24. Constitution bench of this Court in the case of *Hardeep Singh v. State of Punjab and Others*²⁸ in the context of Section 319 of Cr.P.C. has expounded the definition and meaning of the word ‘trial’ occurring in said provision and clarified the law regarding the usage of the word ‘trial’ as under:

“38. In view of the above, the law can be summarised to the effect that as ‘trial’ means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the ‘trial’ commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken.”

25. As we have dealt with the point as to when the trial commences, we will also have to deal with the point when the trial ends. This court in the recent case of *Jamin and*

²⁸ (2014) 3 SCC 92.

*Another v. State of Uttar Pradesh and Another*²⁹, reiterating the judgment of this Court in the case of *Shashikant Singh v. Tarkeshwar Singh and Another*³⁰ held that, the conclusion of the trial in a criminal prosecution if it ends in conviction, is complete only when the sentence is imposed on the convict and in case of acquittal ends with the judgment of acquittal. This Court has held:

“55. The relevant portions from the reasoning assigned by the Court in arriving at the aforesaid conclusions are reproduced hereinbelow:

27. From a perusal of the provisions extracted above, it is seen that if the Sessions Court while analysing the evidence recorded finds that there is no evidence to hold the accused for having committed the offence, the Judge is required to record an order of acquittal. In that case, there is nothing further to be done by the learned Judge and therefore the trial concludes at that stage. In such cases where it arises under Section 232 CrPC and an order of acquittal is recorded and when there are more than one accused or the sole accused, have/has been acquitted, in such cases, that being the end of the trial by drawing the curtain, the power of the court to summon an accused based on the evidence as contemplated under Section 319 CrPC will have to be invoked and exercised before pronouncement of judgment of acquittal. There shall be application of mind also, as to whether separate trial or joint trial is to be held while trying him afresh. After such order

²⁹ 2025 INSC 330

³⁰ (2002) 5 SCC 738.

it will be open to pronounce the judgment of acquittal of the accused who was tried earlier.

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29. The above aspects would indicate that even after the pronouncement of the judgment of conviction, the trial is not complete since the learned Sessions Judge is required to apply her/his mind to the evidence which is available on record to determine the gravity of the charge for which the accused is found guilty; the role of the particular accused when there is more than one accused involved in an offence and in that light, to award an appropriate sentence. Therefore, it cannot be said that the trial is complete on the pronouncement of the judgment of conviction alone, though it may be so in the case of acquittal as contemplated under Section 232 CrPC, since in that case there is nothing further to be done by the learned Judge except to record an order of acquittal which results in conclusion of trial.

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32. Therefore, from a perusal of the provisions and decisions of this Court, it is clear that the conclusion of the trial in a criminal prosecution if it ends in conviction, a judgment is considered to be complete in all respects only when the sentence is imposed on the convict, if the convict is not given the benefit of Section 360 CrPC. Similarly, in a case where there are more than one accused and if one or more among them are acquitted and the others are convicted, the trial would stand concluded as against the accused who are acquitted and the trial will have to be concluded against the convicted accused with the imposition of sentence. When considered in the context of Section 319 CrPC, there would be no dichotomy as argued, since what becomes relevant here is only the decision to summon a

new accused based on the evidence available on record which would not prejudice the existing accused since in any event they are convicted.”

26. Thus, from the foregoing discussion, it may be concluded that, in the context of most provisions of the Code, a criminal trial ordinarily commences upon the framing of charges and concludes with the pronouncement of the judgment and sentence imposed by the Trial Court. Where the accused is convicted, the trial attains finality upon the pronouncement of the order of sentence. Conversely, where the accused is acquitted, the trial comes to an end upon the passing of the order of acquittal by the Trial Court or the Court conducting the trial. The meaning of the word trial attains significance, although the principal question framed for consideration in the present matter shall be answered in the succeeding paragraphs while dealing with the contextual interpretation of Section 374, it is clarified at this stage that the expression "*trial*", as employed in the said provision, must be understood in the aforesaid sense and would be interpreted to mean that it commences upon the framing of charges and concludes with the pronouncement of the judgment by the Trial Court. Where the accused is convicted, the trial attains finality upon the pronouncement of the order of sentence. Conversely, where the accused is

acquitted, the trial comes to an end upon the passing of the order of acquittal by the Trial Court or the Court conducting the trial.

VI. ANALYSIS AND ADJUDICATION OF THE POINT FORMULATED HEREINABOVE:

27. Having dealt with the general principles which have to be kept in mind while adjudicating the issue which has been framed before this court, now we proceed to answer the point formulated hereinabove. Keeping in mind, the principles which have been enumerated above, the answer to the above question has to be negative i.e. an appeal under Section 374 of Cr.P.C. would not be maintainable against the judgement of conviction recorded by the Session Court while exercising appellate jurisdiction and reversing an order of acquittal passed by the Trial Court for the elaborate reasons assigned hereinbelow:

VI.1. NO SUCH APPEAL GIVEN IN THE STATUTE

28. As held hereinabove, a conjoint reading of the relevant provisions of the Code makes it abundantly clear that an appeal of the nature contended for has not been contemplated either under the Cr.P.C. or under the BNSS.

Since the right of appeal is a creature of statute, such a right can exist only where it is expressly conferred by law. In the absence of an express statutory provision, no appeal can be maintained. It is equally well settled that, under the guise of equity, justice, or any other equitable consideration, the Court cannot judicially legislate or create a right of appeal which the legislature has consciously not provided for under the Code.

29. Section 372 of the Cr.P.C. and Section 413 of the BNSS expressly prohibit the entertainment of appeals except as provided under the respective enactments. Thus, where an accused has been acquitted by a Magistrate upon the conclusion of the trial, the victim or the State, as the case may be, is entitled to prefer an appeal as contemplated under proviso to Sections 372 and 378 of the Cr.P.C. respectively and the corresponding provisions of the BNSS. In the exercise of its appellate jurisdiction, the appellate court is fully empowered to reverse the order of acquittal and record a conviction, where the facts and law so warrant. However, where the appellate court reverses the order of acquittal and convicts the accused, the mere fact that the conviction is recorded for the first time by the appellate court does not, by itself, confer a further right of appeal before the High Court. In the absence of an express statutory provision

conferring such a right, no appeal would lie. The remedy available to the accused in such circumstances is to invoke the revisional jurisdiction of the High Court under Sections 397 and 401 of the Cr.P.C., or the corresponding provisions of the BNSS, subject to the limitations governing the exercise of such jurisdiction.

- 30.** This Court has consistently held that the right of appeal is neither an inherent nor a natural right, but a substantive statutory right. Such a right can be exercised only in the manner and subject to the conditions prescribed by the statute creating it. Consequently, the existence, scope, and extent of an appellate remedy must be determined strictly with reference to the statutory provisions, and no appellate jurisdiction can be assumed or inferred in the absence of an express legislative mandate.
- 31.** It is equally well settled that where the legislature has consciously provided for appeals in certain situations while remaining silent in others, such silence cannot be supplied by judicial interpretation. Courts are not empowered to enlarge the scope of appellate remedies on considerations of equity, hardship, or perceived anomalies, as doing so would amount to creating a substantive right which falls exclusively within the legislative domain. The scheme of the Code, therefore, requires that every appeal must be

traceable to an express statutory provision, failing which the jurisdiction of the appellate court cannot be invoked.

- 32.** The contention that a further appeal should nevertheless be held maintainable on the ground that the conviction has been recorded for the first time by the appellate court cannot be accepted. While such a circumstance may appear to warrant an additional appellate scrutiny as a matter of policy, it cannot furnish a legal basis for recognising a substantive right of appeal. The question is not whether a further appeal may be desirable, but whether the statute has created such a remedy. In the absence of a clear legislative provision conferring a right of appeal against a judgment of conviction rendered by the Sessions Court in an appeal against acquittal, the accused cannot claim such a remedy as a matter of right.

VI.2. THE INTERPRETATION OF SECTION 374 OF CODE OF CRIMINAL PROCEDURE.

- 33.** For the purposes of clarity, this Chapter is divided into three parts, which are connected to each other. The same are *VI.2.1.* The interpretation of the words of Section 374 ‘on a trial held by’ and *VI.2.2.* The Appellate Court is exercising Appellate Jurisdiction to reverse such order of acquittal and is convicting the Accused. *VI.2.3.* The power of the

Appellate Court exercising Appellate Jurisdiction and the power of the Revisional Court exercising Revisional Jurisdiction.

VI.2.1. THE INTERPRETATION OF THE WORDS OF SECTION 374 ‘ON A TRIAL HELD BY’

34. The answer to the question framed hereinabove turns upon the interpretation of the language employed in Section 374 of the Cr.P.C. Sections 374(1), 374(2), and 374(3)(a) uniformly employ the expression "*on a trial held by*", and the true import of this expression forms the foundation for answering the issue under consideration. For the purpose of the present discussion, it would suffice to examine the scope of the said expression as occurring in Section 374(3)(a), since the interpretation thereof would, *ipso facto*, govern the corresponding expression employed in the other subsections as well. Section 374(3)(a) provides that an appeal shall lie to the Court of Session from a conviction *on a trial held by* a Magistrate of the classes specified therein. If the expression is construed according to its plain and ordinary meaning, it necessarily conveys the following:

34.1. Firstly, the expression "*on a trial*" requires consideration. Construed in its plain and ordinary sense, the expression signifies that the court from

whose judgment an appeal lies must itself have conducted the trial of the case. If the meaning of the expression "*trial*", as discussed hereinabove under Chapter IV.2, is imported into Section 374(3)(a), the phrase "*on a trial*" would necessarily refer to the proceedings commencing with the framing of charges and culminating in the judgment of conviction and the order of sentence. Consequently, in the context of Section 374(3)(a), the expression denotes a trial conducted by the Magistrate, commencing with the framing of charges and concluding with the conviction and sentencing of the accused. In other words, the entire exercise constituting the trial must have been conducted by the Magistrate for the provision to be attracted.

34.2. Secondly, the expression "*held by*", which immediately follows the words "*on a trial*", also assumes significance. Construed according to its plain and ordinary meaning, the expression "*held by*" refers to the Court that conducts or presides over the trial. In other words, it denotes the Court which is seized of the trial proceedings and before which the entire trial is held. Accordingly, in the context of Section 374(3)(a), the expression "*held by*" necessarily refers to the

Magistrate who has conducted the trial from its commencement until its conclusion.

34.3. A combined reading of the expressions "*on a trial*" and "*held by*" leads to the inescapable conclusion that the provision contemplates the Court which itself conducts the trial, namely, the Court before which the proceedings commence with the framing of charges and culminate in the judgment of conviction and the order of sentence. Thus, in the context of Section 374(3)(a), an appeal lies from the judgment of conviction and sentence passed by the Magistrate who has conducted the entire trial to the Court of Session exercising appellate jurisdiction. The provision, therefore, unmistakably contemplates an appeal only from the Court which has itself held the trial and not from a Court exercising appellate jurisdiction.

34.4. The principal contention advanced on behalf of the appellant in the facts obtained is that, since Appellant has been convicted for the first time by the Sessions Court while exercising its appellate jurisdiction, he would be entitled to prefer an appeal before the High Court under Section 374 of the Cr.P.C. However, a careful examination of the expression "*on a trial held by*" occurring in Section 374, it would indicate that, in

the context of the said provision, the trial culminates in the judgment of conviction and the order of sentence pronounced by the Court conducting the trial. The interpretation which was given by the Himachal Pradesh High Court *Arun Sharma v. State of Himachal Pradesh (supra)* holding appeal is maintainable is dealt in the next sub-chapter.

34.5. Therefore, in the present case an Appeal from the Sessions Court which has not conducted the ‘trial’ is not maintainable in the eye of law, as there is no provision under Cr.P.C. or BNSS to file such an appeal.

VI.2.2. THE APPELLATE COURT IS EXERCISING APPELLATE JURISDICTION TO REVERSE SUCH ORDER OF ACQUITTAL AND IS CONVICTING THE ACCUSED.

35. One of the principal contentions advanced on behalf of the appellant is that the expression employed in Section 374 of the CrPC is "*convicted on a trial*" and not "*convicted in a trial*." It is submitted that the legislative choice of the preposition "*on*" is deliberate and cannot be rendered otiose by construing it as "*in*." According to the appellant, the expression "*on a trial*" signifies a conviction founded upon or arising out of a trial, without confining such conviction

to the Court which actually conducted the trial. It is, therefore, contended that where an accused is acquitted by the Trial Court but is convicted for the first time by the appellate court upon a re-appreciation of the evidence recorded during the same trial, such conviction would nevertheless be one rendered "*on a trial*," since it is intrinsically founded upon and flows from the trial conducted by the Court of first instance. We are unable to accept the aforesaid submission. A Court exercising trial jurisdiction and a Court exercising appellate jurisdiction perform distinct functions under the statutory scheme of the Code and are vested with different powers. The nature, scope, and incidents of trial proceedings are fundamentally different from those of appellate proceedings. Although it is well settled that an appeal is a continuation of the original proceedings and that, upon the disposal of the appeal, the judgment of the Trial Court merges with that of the appellate court, these doctrines do not obliterate the distinction between trial jurisdiction and appellate jurisdiction. The doctrine of continuation of proceedings and the doctrine of merger determine the legal consequences flowing from an appeal; they do not alter the character of the jurisdiction exercised by the respective Courts. The Court conducting the trial continues to exercise trial jurisdiction, whereas the

Court hearing the appeal continues to exercise appellate jurisdiction. Consequently, a conviction recorded by an appellate court while exercising appellate jurisdiction cannot, for that reason alone, be equated with a conviction recorded "**on a trial held by**" that Court within the meaning of Section 374 of the Cr.P.C.

- 36.** It is also necessary to bear in mind that the provisions governing trials before Courts of first instance including trials before a Court of Session, trial of warrant cases by Magistrates, trial of summons cases by Magistrates, and summary trials are contained in Chapters XVIII to XXI of Cr.P.C. (corresponding to Chapters XIX to XXII of the BNSS). In contrast, the provisions relating to appeals are contained in Chapter XXIX of the Cr.P.C. (corresponding to Chapter XXXI of the BNSS). The legislative scheme, therefore, clearly indicates that the trial before the Court of first instance is distinct from the appellate proceedings. An appeal arises only upon the culmination of the trial by the Trial Court through the pronouncement of a judgment or other appealable order and is thereafter adjudicated by a different forum exercising appellate jurisdiction. The separation of these chapters under the statutory framework reinforces the distinction between the stage of trial and the stage of appeal.

37. In the case of *Arun Sharma v. State of Himachal Pradesh (supra)*, the Himachal Pradesh High Court was deciding a *Criminal Revision*. The accused in that case were tried by the Court of the Additional Chief Judicial Magistrate, Shimla, for offences under Sections 452, 147, 148, 323, 324, 506 read with Section 149 of the IPC and were acquitted by ACJM. Aggrieved by the acquittal, the State preferred an appeal under Section 378 CrPC before the Sessions Judge (Forest), Shimla, who, by judgment dated 31.10.2019, reversed the acquittal and convicted the accused for the first time. Accused preferred criminal revision petitions under Sections 397 and 401 Cr.P.C. on the premise that no statutory appeal lies against a conviction recorded by the Sessions Court in exercise of its appellate jurisdiction. This gave rise to the preliminary legal issue before the High Court as to whether the proper remedy against such a first-time appellate conviction was a criminal appeal under Section 374(2) Cr.P.C. or only a criminal revision. The Court in that context held as follows:

“7. Another issue involved herein is that petitioners have been convicted by learned Sessions Judge in an appeal preferred by State after their acquittal by the trial Court and Section 374 (2) Cr.P.C. provides appeal to the convict on a trial' by the Sessions Judge or Additional Sessions Judge. Considering the pronouncements of the Apex Court in *Kashmira Singh Vs. The State of Punjab*, (1977) 4 SCC 291,

Babu Singh and Others Vs. State of U.P. (1978) 1 SCC 579. Shailendra Kumar Vs. State of Delhi, 2004 (4) SCC 178 and Smt. Akhtari Bi Vs. State of M.P. AIR 2001 SC 1528, it is clear that on filing appeal which is a statutory right, the trial Court's verdict does not attain finality during pendency of the appeal, trial is deemed to be continuing. Therefore, the words used in Section 374(2) of Cr.P.C. 'on a trial' shall include the appeal preferred by the State against acquittal of an accused and judgment of conviction passed in such appeal by learned Sessions Judge or Additional Sessions Judge is to be considered a judgment of conviction passed by that Court, 'on trial', as the appeal preferred by the State in that Court is to be considered to be continuation of trial. Thus petitioners have right to appeal to the High Court against their conviction."

38. We do not agree with the above proposition for more than one reason and the same are as follows:

38.1. The first proposition is that an appeal is a continuation of the trial or the original proceedings. This principle is well settled in criminal jurisprudence and has repeatedly been affirmed by this Court. It signifies that the judgment of the Trial Court does not attain finality during the pendency of the appeal; that the appellate court is empowered to reappreciate the evidence; and that, upon the disposal of the appeal, the judgment of the appellate court supersedes or merges with that of the Trial Court. These consequences flow from the doctrine of continuity of proceedings and assume relevance in diverse contexts, including the

doctrine of merger, suspension of sentence, limitation, and the scope of appellate powers.

38.2. The second proposition, however, stands on a different footing. Section 374(2) of the Cr.P.C. does not merely refer to a person who has been convicted during the course of criminal proceedings or upon the disposal of an appeal. Rather, it confers a right of appeal upon a person "*convicted on a trial held by a Sessions Judge or an Additional Sessions Judge.*"

The statutory emphasis is, therefore, upon the nature of the jurisdiction exercised by the Court recording the conviction. A Sessions Judge deciding an appeal under Section 378 of the Cr.P.C. exercises appellate jurisdiction and not trial jurisdiction. The mere fact that an appeal is regarded as a continuation of the original proceedings does not, by itself, alter the character of the jurisdiction exercised by the appellate court.

38.3. The decision of the Himachal Pradesh High Court in *Arun Sharma* appears to proceed from the first proposition to the second without expressly demonstrating why the latter necessarily follows from the former. The reasoning adopted therein proceeds on the premise that, since an appeal is a continuation of the trial, a conviction recorded by the Sessions Judge

while exercising appellate jurisdiction must necessarily be regarded as a conviction "*on a trial*" within the meaning of Section 374(2). Such an inference does not appear to flow inexorably from the doctrine of continuity of proceedings. While the doctrine explains the procedural continuity between the trial and the appeal, it does not, by itself, convert an appellate court into a court exercising trial jurisdiction.

38.4. The same distinction applies in relation to the doctrine of merger. The principle that the judgment of the appellate court supersedes or merges with the judgment of the Trial Court merely describes the legal consequence that follows upon the disposal of the appeal. It does not imply that the appellate court retrospectively assumes the character of the Court which conducted the trial. The doctrine of merger determines which judgment remains operative after the appeal; it does not alter the source, nature, or character of the jurisdiction exercised by the appellate court.

39. To summarise, the jurisdiction exercised by a Trial Court is fundamentally distinct from that exercised by an appellate court. Consequently, the expression "*on a trial held by*" necessarily refers to the Court which has itself conducted

the trial, namely, the Court before which the proceedings commenced and culminated in the judgment of conviction and the order of sentence. The said expression cannot be construed to include a Court exercising appellate jurisdiction, notwithstanding that the appeal is a continuation of the original proceedings. Thus, we hold that judgment in *Arun Sharma* (supra) does not lay down correct law and therefore it is over-ruled.

VI.3. THE POWER OF THE APPELLATE COURT EXERCISING APPELLATE JURISDICTION AND THE POWER OF THE REVISIONAL COURT EXERCISING REVISIONAL JURISDICTION.

40. One of the major contention put forth by the appellant before this court is the difference between an appellate jurisdiction and revisional jurisdiction under Cr.P.C. Hence, we proceed to discuss the power of the appellate court and the revisional court in the context of Cr.P.C. under the following two heads.

VI.3.1. THE POWER OF THE APPELLATE COURT EXERCISING APPELLATE JURISDICTION UNDER Cr.P.C.

41. In Cr.P.C. the powers of the appellate court has been specified in Section 386 and Section 391 of the Code (Section 427 and 432 of BNSS). The provisions mentioned

above itself, are complete in itself and therefore one need not go further except these provisions. The appellate court exercising the appellate jurisdiction, for all practical purposes can pass any orders which it deems fit, considering the nature of the case. The considerations required to be examined by an appellate court while dealing with an appeal against conviction are distinct from those applicable in an appeal against acquittal. Though in both the cases, similar power would be exercised by the appellate court, the factors which has to be looked into in both these cases are different and the approach which the appellate court follows is different. This court in the case of *Chandrappa and Others v. State of Karnataka*³¹ summarised the power of appellate courts as follows:

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded; (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

³¹ (2007) 4 SCC 415.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

42. This Court in the cases of *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Another* (supra), *Garikapati Veeraya v. N. Subbiah Choudhry* (supra), *Chandrappa v. State of Karnataka* (supra), *Nagarajan v. State of Tamil Nadu* (supra), have in detail dealt with the powers of the appellate court under Cr.P.C.

43. The appellate jurisdiction under the Code of Criminal Procedure is not merely supervisory but is substantive and

comprehensive in nature. Section 386 Cr.P.C. confers wide powers upon the appellate court to examine the correctness, legality and propriety of the judgment under challenge. While exercising appellate jurisdiction, the court is empowered to independently review and re-appreciate the entire evidence on record, determine both questions of fact and law, and arrive at its own conclusions without being bound by the findings recorded by the trial court. The appellate court is, therefore, vested with plenary powers to render complete justice within the framework of the Code.

- 44.** The appellate court is competent to affirm, reverse or modify the findings of the trial court and, where the circumstances so warrant, may acquit a convicted person, convict an acquitted person, alter the nature or extent of the sentence, order a retrial, or direct further inquiry. The width of these powers demonstrates that an appeal under the Code is not confined to a mere scrutiny of legal errors but contemplates a comprehensive reconsideration of the case on both facts and law. Nevertheless, such powers are to be exercised in accordance with the settled principles governing criminal appeals, particularly where an acquittal is sought to be reversed.
- 45.** The jurisprudence of this Court consistently recognises that an appeal is a continuation of the original criminal

proceedings and that the appellate court, while exercising jurisdiction under Chapter XXIX of the Code, effectively steps into the shoes of the court whose decision is under challenge for the purpose of adjudicating the correctness of that decision. Consequently, the appellate court is not restricted to examining procedural irregularities alone but is duty-bound to independently assess the evidence, the findings, and the conclusions reached by the court below before recording its own judgment.

VI.3.2. THE POWER OF THE REVISIONAL COURT EXERCISING REVISIONAL JURISDICTION UNDER Cr.P.C.

46. The revisional jurisdiction under the Code of Criminal Procedure is fundamentally distinct from appellate jurisdiction. Unlike an appeal, which is a continuation of the original proceedings and entails a rehearing on facts and law, the power of revision is a discretionary supervisory jurisdiction conferred upon the High Court and the Court of Session, to satisfy themselves as to the correctness, legality or propriety of any finding, sentence or order, and as to the regularity of the proceedings of the subordinate criminal court. The revisional court does not ordinarily function as a court of appeal, nor is it expected to undertake a fresh

appreciation of the entire evidence merely because another view is possible.

47. The object of revisional jurisdiction is to prevent miscarriage of justice arising from jurisdictional errors, manifest illegality, procedural irregularity or perversity in the findings of the subordinate court. Consequently, the revisional court ordinarily interferes only where there exists a patent error of law, a material irregularity in the exercise of jurisdiction, non-compliance with mandatory provisions of law, or findings which are so unreasonable or perverse that they occasion a failure of justice. It is well settled that the revisional jurisdiction cannot be invoked as a substitute for an appeal, nor can it be exercised to enable a re-hearing of the case on facts in the manner contemplated under Chapter XXIX of the Code.

48. The powers conferred under Sections 397 and 401 Cr.P.C. are, therefore, supervisory and corrective rather than appellate. While the Revisional Court possesses wide powers to examine the record of the proceedings and to rectify jurisdictional and legal errors, those powers are exercised sparingly and in exceptional cases to secure the ends of justice. The Revisional Court ordinarily refrains from reassessing the credibility of witnesses or substituting its own conclusions on questions of fact unless the findings

recorded by the subordinate court suffer from manifest perversity or have resulted in a gross miscarriage of justice.

49. This Court in the case of *Amit Kapoor v. Ramesh Chander and Another*³², has explained the Revisional Jurisdiction of the Courts. It was held:

“**12.** Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in

³² (2012) 9 SCC 460

accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the Cr.P.C.”

50. The revisional jurisdiction under Sections 397 and 401 Cr.P.C., though supervisory in nature, is by no means confined to a mere examination of jurisdictional errors or pure questions of law. The Revisional Court is empowered to call for and examine the entire record of the proceedings to satisfy itself as to the correctness, legality and propriety of any finding, sentence or order, as well as the regularity of the proceedings. In appropriate cases, the exercise of such jurisdiction necessarily entails an examination of the evidence on record, not for undertaking a fresh trial or substituting a possible view merely because another view is available, but to ascertain whether the findings recorded by the subordinate court are perverse, unsupported by evidence, based on misreading of material evidence, or have resulted in a manifest miscarriage of justice.

VI.3.3. THE REMEDY AVAILABLE TO THE APPELLANT AND TO OTHER PERSONS IN SUCH CASES.

51. Having examined the distinct nature and scope of the powers exercised by the Appellate Court and the Revisional

Court, it now becomes necessary to consider the remedy available to the appellant and other persons similarly situated. The contention advanced on behalf of the appellant that the right of appeal against a conviction is a valuable and substantive right is undoubtedly well founded. However, where an appeal of the nature sought to be maintained before the High Court is not contemplated by the statutory framework, this Court cannot, by resorting to judicial interpretation, create such a right. To do so would amount to judicial legislation, which is clearly impermissible.

52. In view of the conclusions recorded hereinabove, the statutory remedy presently available to the appellant is to invoke the revisional jurisdiction of the High Court under Sections 397 and 401 of the Cr.P.C., or the corresponding provisions of the BNSS. The High Court has also reiterated this position by observing that the appellant is at liberty to re-approach it by way of a criminal revision, and that the present appeal is, therefore, not maintainable.

53. The principal apprehension expressed on behalf of the appellant, and shared by other persons similarly situated, is that the revisional jurisdiction of the High Court cannot be equated with its appellate jurisdiction. It is contended that, while an appellate court is empowered to reappreciate the entire evidence, reconsider both questions of fact and law,

and rehear the matter on merits, the revisional jurisdiction is comparatively limited and is ordinarily exercised to correct jurisdictional errors, legal infirmities, procedural irregularities, or manifest perversity resulting in a miscarriage of justice. Consequently, although the remedy of revision is undoubtedly available, it cannot be regarded as an effective substitute for a statutory right of appeal. This contention, in our considered view, merits serious consideration, as it is not without substance. The reason for the same is as follows:

53.1. *Firstly*, there can be no dispute that the appellate jurisdiction of the High Court is qualitatively different from its revisional jurisdiction. While hearing an appeal, the appellate court is vested with the power to undertake a comprehensive reappraisal of the evidence on record, reassess the findings of fact as well as law, and determine the correctness of the judgment under challenge on its own merits. The appellate court ordinarily issues notice to the respondent, hears the parties, and decides the appeal upon an independent evaluation of the material available on record. The exercise of revisional jurisdiction stands on an entirely different footing. The High Court exercises such jurisdiction within the limits prescribed by Sections

397 and 401 of the Cr.P.C. The power is discretionary and supervisory in nature, and is ordinarily invoked to correct jurisdictional errors, legal infirmities, procedural irregularities, or findings suffering from manifest perversity resulting in a miscarriage of justice. Unlike an appeal, a revision does not confer upon a litigant an unrestricted right to seek a complete rehearing on facts and law.

53.2. The distinction assumes particular significance in cases of the present nature. An accused who is convicted for the first time by the appellate court is not afforded a statutory right of appeal against such conviction. Consequently, such an accused is left to invoke only the revisional jurisdiction of the High Court, notwithstanding the fact that the conviction has never been subjected to appellate scrutiny at the instance of the accused. In effect, the accused is deprived of the opportunity to have the conviction examined within the broader ambit of appellate jurisdiction and is instead confined to the comparatively limited scope of revisional jurisdiction.

53.3. It is also pertinent to note that, while an appellate court proceeds to examine the evidence on record as a matter of right in deciding the appeal on merits, a

revisional court does not do so in every case. Before embarking upon an examination of the evidence or the merits of the conviction, the High Court must first determine whether the case warrants the exercise of its revisional jurisdiction. Only upon being satisfied that the matter discloses jurisdictional error, legal infirmity, procedural irregularity, manifest perversity, or a miscarriage of justice would the Court ordinarily proceed to interfere. This fundamental distinction underscores that the remedy of revision, though available, is not equivalent in scope or efficacy to a statutory right of appeal.

- 54.** The legislature, keeping in mind the above anomaly has explicitly provided in appropriate cases for the exercise of Appellate jurisdiction by the revisional court under Section 401(1). The aforesaid legislative scheme is neither accidental nor inadvertent. The Code consciously recognizes that, where an accused who has been acquitted by the trial court is convicted for the first time by the appellate court, the absence of a statutory right of appeal may, in an appropriate case, warrant corrective intervention. It is for this limited purpose that Section 401(1) empowers the High Court, while exercising revisional jurisdiction, to exercise any of the powers conferred on a court of appeal,

thereby ensuring that a manifest miscarriage of justice does not remain without an effective remedy.

- 55.** At the same time, the conferment of appellate powers upon the revisional court under Section 401(1) does not obliterate the distinction between an appeal and a revision. The revisional jurisdiction continues to remain supervisory and discretionary in nature and cannot be equated with a statutory appeal. Nevertheless, where the conviction is recorded for the first time by the appellate court upon reversal of an order of acquittal, the High Court is expected to exercise its revisional jurisdiction with greater circumspection and scrutiny than in cases where the conviction has been concurrently recorded by both the trial court and the appellate court.
- 56.** Such an interpretation harmonizes the statutory framework by preserving the legislative intent of not providing a second appeal, while simultaneously ensuring that an accused is not left remediless against a conviction recorded for the first time by the appellate court. The revisional jurisdiction under Section 401 thus operates as a carefully calibrated safeguard against patent illegality, perversity, or miscarriage of justice in such exceptional situations, without transforming the revision into a regular appellate proceeding.

- 57.** Consequently, although the remedy available to the accused is one of revision and not appeal, the amplitude of the High Court's powers under Section 401(1), read in the context of a first conviction by the appellate court, obliges the High Court to undertake a more searching examination of the correctness, legality and propriety of the conviction than ordinarily it would be warranted in revisions arising from concurrent findings of guilt. Such an approach alone gives meaningful effect to the legislative design underlying Section 401(1) while maintaining the distinction between appellate and revisional jurisdiction.
- 58.** A plain reading of Section 401(3) would indicate that nothing contained in Section 401 shall be deemed to authorise the High Court to convert a finding of acquittal into one of conviction. Significantly, the limitation imposed by sub-section (3) is directed only against the ultimate relief that may be granted in revision and not against the scope of examination that may be undertaken by the revisional court. Thus, while the High Court is prohibited from directly recording a conviction in revision, it is not precluded from scrutinising the evidence in detail to determine whether the acquittal or conviction is legally sustainable. If such scrutiny discloses manifest illegality or perversity, the revisional court may set aside the impugned order and pass

such orders as are permissible in law, including ordering a retrial or remanding the matter, while remaining within the statutory limitation contained in Section 401(3).

59. Equally, where the revision is preferred by a convicted person, the revisional court is competent to examine the entire evidentiary record to determine whether the conviction suffers from patent illegality, perversity or a failure of justice. If such examination reveals that the prosecution has failed to establish guilt beyond reasonable doubt or that the conviction is otherwise unsustainable in law, the revisional court is fully empowered to set aside the conviction and acquit the accused. Thus, although revisional jurisdiction is narrower than appellate jurisdiction, it nevertheless permits an examination of factual issues to the extent necessary to prevent a miscarriage of justice. The restriction contained in Section 401(3) operates only against converting an acquittal into a conviction and does not curtail the revisional court's power to interfere with an erroneous conviction.

60. Having held that the only statutory remedy available to the appellant is to invoke the revisional jurisdiction of the High Court, there being no provision under the Cr.P.C. or the BNSS conferring a right of appeal in such circumstances, we consider it appropriate to observe that revisions arising

out of convictions recorded for the first time by an appellate court, upon reversal of an order of acquittal passed by the Trial Court, stand on a distinct footing from revisions arising out of concurrent findings of conviction. The former category of cases warrants a more liberal and careful exercise of the High Court's revisional jurisdiction, bearing in mind that the accused has not had the benefit of a statutory appeal against the conviction. In such cases, the High Courts may appropriately adopt a more liberal approach while exercising the revisional jurisdiction vested in them and, where the facts and circumstances so warrant, invoke the power conferred under Section 401(1) of the Cr.P.C., or the corresponding provision of the BNSS, to exercise any of the powers conferred upon an appellate court, subject always to the well-settled principles governing the exercise of revisional jurisdiction.

VII. CONCLUSION

61. Thus, from the above discussion, the question framed is answered in negative i.e. an appeal under Section 374 of the Code of Criminal Procedure, 1973 (corresponding to Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is not maintainable against a judgment of conviction recorded by a Sessions Court while exercising appellate

jurisdiction and reversing an order of acquittal passed by a Trial Court. The only remedy which is available, is that of filing a revision under Section 397 r/w 401 (corresponding to Section 438 r/w 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023).

62. Though submissions are made with regard to the constitutionality or *vires* of Rule 48 of Madhya Pradesh High Court Rules, 2008, we do not propose to examine the same, as the said issue is pending adjudication before the High Court and as such, we have not expressed any opinion in that regard.

63. Therefore, from the above discussion, the present appeal deserves to be dismissed, hence dismissed. However, we give liberty to the appellant, if he so desires to file a revision against the order of dismissal of Criminal Appeal 3/2025 dated: 27.05.2025 by the Seventh Additional Sessions Judge, District Bhind.

.....J.
(ARAVIND KUMAR)

.....J.
(PRASANNA B. VARALE)

NEW DELHI;
JULY 30th, 2026.

APPENDIX - I

IV.1. PROVISIONS UNDER CODE OF CRIMINAL PROCEDURE:

Section 372. No appeal to lie unless otherwise provided. —No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]

Section 374. Appeals from convictions. — (1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years [has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person, —

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session.

[(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.]

Section 377. Appeal by the State Government against

sentence. — (1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present 1 [an appeal against the sentence on the ground of its inadequacy—

(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.]

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may also direct] the Public Prosecutor to present 1 [an appeal against the sentence on the ground of its inadequacy—

(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].

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, [the Court of Session or, as the case may be, the High Court] shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

[(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

Section 378. Appeal in case of acquittal. — [(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5), —

- (a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
- (b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police

Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, 1 [the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision].

(3) [No appeal to the High Court] under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

Section 379. Appeal against conviction by High Court in certain cases. —Where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.

Section 386. Powers of the Appellate Court. — After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

- (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the

accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction—

- (i)** reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or
- (ii)** alter the finding, maintaining the sentence, or
- (iii)** with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same—

(c) in an appeal for enhancement of sentence—

- (i)** reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or
- (ii)** alter the finding maintaining the sentence, or
- (iii)** with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

Section 391. Appellate Court may take further evidence or direct it to be taken. — (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

Section 397. Calling for records to exercise powers of revision.— (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation. — All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Section 398. Power to order inquiry.— On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

Section 399. Sessions Judge's powers of revision.— (1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High 171 Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

400. Power of Additional Sessions Judge.— An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

Section 401. High Court's powers of revision. —(1) In the case of any proceeding the record of which has been called for by itself 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 sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the

Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

IV. 2. PROVISIONS OF BHARATIYA NAGARIK SURAKSHA SANHITA, 2023.

Section 413. No appeal to lie unless otherwise provided.— No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Sanhita or by any other law for the time being in force: 143 Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

415. Appeals from convictions. — (1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person, -

(a) convicted on a trial held by Magistrate of the first class, or of the second class; or

(b) sentenced under section 364; or

(c) in respect of whom an order has been made or a sentence has been passed under section 401 by any Magistrate, may appeal to the Court of Session.

(4) When an appeal has been filed against a sentence passed under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023, the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

Section 418. Appeal by State Government against sentence.

— (1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—

(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.

(2) If such conviction is in a case in which the offence has been investigated by any agency empowered to make investigation into an offence under any Central Act other than this Sanhita, the Central Government may also direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—

(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.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

(4) When an appeal has been filed against a sentence passed under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023, the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

Section 419. Appeal in case of acquittal. — (1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and nonbailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in a case in which the offence has been investigated by any agency empowered to make investigation into an offence under any Central Act other than this Sanhita, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision. 145 (3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

Section 420. Appeal against conviction by High Court in certain cases.—Where the High Court has, on appeal, reversed

an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.

Section 427. Powers of Appellate Court.— After perusing such record and hearing the appellant or his advocate, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 418 or section 419, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction—

- (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial; or
- (ii) alter the finding, maintaining the sentence; or

- (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;
- (c) in an appeal for enhancement of sentence—
 - (i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence; or
 - (ii) alter the finding maintaining the sentence; or 147
 - (iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;
- (d) in an appeal from any other order, alter or reverse such order;
- (e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the

accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

Section 438. Calling for records to exercise powers of revision.— (1) The High Court or any Sessions Judge may call

for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record. Explanation.— All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no

further application by the same person shall be entertained by the other of them.

Section 439. Power to order inquiry.— On examining any record under section 438 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 226 or subsection (4) of section 227, or into the case of any person accused of an offence who has been discharged: Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

Section 440. Sessions Judge's powers of revision.— (1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 442.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 442 shall,

so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Section 441. Power of Additional Sessions Judge.—An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

Section 442. High Court's powers of revision. — (1) In the case of any proceeding the record of which has been called for by itself 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 sections 427, 430, 431 and 432 or on a Court of Session by section 344, and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 433.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by advocate in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Sanhita an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Sanhita an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.