

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

Procedure where Judges of Court of Appeal are equally divided

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417¹[, section 417A] and Chapter XXXII.

Abatement of appeals

431. Every appeal under²[section 417 or section 417A] shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII

OF REFERENCE AND REVISION

432 and 433. [Omitted by Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]

434. [Omitted by section 6 of the Criminal Procedure Amendment Act, 1943 (Act No. XXVI of 1943).]

Power to call for records of inferior Courts

435.(1) The High Court Division or any Sessions Judge³[, Chief Metropolitan Magistrate] or District Magistrate, or any Sub-divisional Magistrate empowered by the Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the

¹ The comma, word and figure ", section 417A" were inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

² The words and figures "section 417 or section 417A" were substituted, for the words, figures, commas and brackets "section 411A, sub-section (2), or section 417" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

³ The comma and words ", Chief Metropolitan Magistrate" were inserted by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

local limits of its or his 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 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 exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section ¹[* * *].

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(3) [*Repealed by section 116 of the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).*]

(4) If an application under this section has been made either to the Sessions Judge or ²[to the Chief Metropolitan Magistrate or] District Magistrate, no further application shall be entertained by the other of them.

436. On examining any record under section 435 or otherwise, the High Court Division or the Sessions Judge may direct the ³[Chief Metropolitan Magistrate or District Magistrate] by himself or by any of the Magistrates subordinate to him to make, and the ⁴[Chief Metropolitan Magistrate or

Power to order inquiry

¹ The words and figure "and of section 437" were omitted vide section 7 of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words "to the Chief Metropolitan Magistrate or" were inserted by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

³ The words "Chief Metropolitan Magistrate" were substituted, for the words "District Magistrate" by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

⁴ The words "Chief Metropolitan Magistrate" were substituted, for the words "District Magistrate" by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

District 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 (3) 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.

437. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]

Report to High Court Division

438.(1) The Sessions Judge ¹[, Chief Metropolitan Magistrate] or District Magistrate may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court Division the result of such examination, and, when such report contains as recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

(2) 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.

High Court Division's powers of revision

439.(1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court Division may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

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

¹ The comma and words ", Chief Metropolitan Magistrate" were inserted by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

(3) Where the sentence dealt with under this section has been passed by a Magistrate ¹[* * *], the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by ²[a Metropolitan Magistrate or] a Magistrate of the first class.

³[(4) Nothing in this section shall be deemed to authorize the High Court Division to convert a finding of acquittal into one of conviction, or to entertain any proceedings in revision with respect to an order made by the Sessions Judge under section 439A].

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

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.

⁴[439A.(1) In the case of any proceeding the record of which has been called for by himself or which otherwise comes to his knowledge, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court Division under section 439.

Sessions Judge's
powers of
revision

(2) 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.

¹ The words and figure "acting otherwise than under section 34" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

² The letter and words "a Metropolitan Magistrate or" were inserted by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

³ Sub-section (4) was substituted for sub-section (4) by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

⁴ Section 439A was inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(3) An Additional Sessions Judge shall have and may exercise all powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him under any general or special order of the Sessions Judge.]

Optional with Court to hear parties

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision:

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).

441. [Omitted by Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]

High Court Division's order to be certified to lower Court or Magistrate

442. When a case is revised under this Chapter by the High Court Division, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

¹[CHAPTER XXXIIA

TIME FOR DISPOSAL OF APPEAL AND REVISION

Time for disposal of appeals and revision

442A.(1) An Appellate Court shall dispose of an appeal filed before it within ²[ninety days] from the date of ³[service of notice upon respondents].

¹ CHAPTER XXXIIA was inserted by section 30 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

² The words "ninety days" were substituted, for the words "sixty days" by section 16 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

³ The words "service of notice upon respondents" were substituted, for the words "admission of the appeal" by the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

(2) A Court having power of revision shall dispose of a proceeding in revision within ¹[ninety days] from the date of ²[service of notice upon the parties].

³[(3) In this section, in determining the time, only the working days shall be counted.]]

PART VIII
SPECIAL PROCEEDINGS

CHAPTER XXXIII.—*[Omitted by the Schedule of the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (Act No. II of 1950).]*

CHAPTER XXXIV

LUNATICS

464.(1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defense, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

Procedure in case of accused being lunatic

⁴[(1A) Pending such examination and inquiry the Magistrate may deal with the accused in accordance with the provisions of section 466.]

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

¹ The words "ninety days" were substituted, for the words "sixty days" by section 16 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

² The words "service of notice upon the parties" were substituted, for the words "calling for the records by it" by the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

³ Sub-section (3) was added by section 6 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1983 (Ordinance No. XXXVII of 1983).

⁴ Sub-section (IA) was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).