

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A is charged by a Magistrate of the first class with, and convicted by him of voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(f) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for dacoity on the same facts.

PART VII**OF APPEAL, REFERENCE AND REVISION****CHAPTER XXXI****OF APPEALS**

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Unless otherwise provided, no appeal to lie

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order rejecting application for restoration of attached property

Appeal from order requiring security for keeping the peace or for good behaviour

406. Any person who has been ordered by a Magistrate under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

to the Court of Session:

Provided that the Government may, by notification in the official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the ¹[Chief Metropolitan Magistrate or the District Magistrate shall lie to the Chief Metropolitan Magistrate or, as the case may be, to the] District Magistrate and not to the Court of Session:

Provided, further, that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123.

Appeal from order refusing to accept or rejecting a surety

²[**406A.** Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,-

- ³[(a) if made by the Chief Metropolitan Magistrate or a District Magistrate, to the Court of Session;
- (b) if made by a Metropolitan Magistrate other than the Chief Metropolitan Magistrate, to the Chief Metropolitan Magistrate; or
- (c) if made by any other Magistrate, to the District Magistrate.]]

Appeal from sentence of Magistrate of the second or third class

407.(1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by a

¹ The words and commas "Chief Metropolitan Magistrate or the District Magistrate shall lie to the Chief Metropolitan Magistrate or, as the case may be, to the" were substituted for the words "District Magistrate shall lie to the" by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

² Section 406A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

³ Clauses (a), (b) and (c) were substituted, for clauses (b) and (c) by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

Sub-divisional Magistrate of the second class, may appeal to¹[the District Magistrate].

²[(2) The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Additional District Magistrate subordinate to him and empowered by the Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such Additional District Magistrate, or, if already presented to the District Magistrate, may be transferred to such Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.]

408. Any person convicted on a trial held by an Assistant Sessions Judge,³[a Metropolitan Magistrate,] a District Magistrate⁴[, an Additional District Magistrate] or other Magistrate of the first class, or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by a Magistrate of the first class, may appeal to the Court of Session:

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class

Provided as follows:-

- (a) [~~Repealed by the Criminal Law Amendment Act XII of 1923, section 23.~~]
- (b) when in any case an Assistant Sessions Judge⁵[***]

¹ The words "the District Magistrate" were substituted, for the words "Sessions Judge" by section 29 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

² Sub-section (2) was substituted, for the former sub-section (2) by section 29 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

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

⁴ The comma and words ", an Additional District Magistrate" were inserted by section 15 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

⁵ The words and letter "or a Magistrate" were omitted by section 2 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1984 (Ordinance No. LXX of 1984).

¹[* * *] passes any sentence of imprisonment for a term exceeding ²[five] years, or any sentence of transportation, the appeal of all or any of the accused convicted at such trial shall lie to the High Court Division;

- (c) when any person is convicted by a Magistrate of an offence under section 124A of the Penal Code, the appeal shall lie to the High Court Division.

Appeals to Court of Session how heard

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:

Provided that an Additional Sessions Judge shall hear only such appeals as the Government may by general or special order, direct or as the Sessions Judge of the Division may make over to him.

Appeal from sentence of Court of Session

410. Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court Division.

411. [Omitted by the Schedule of the Adaptation of Central Acts and Ordinance, 1949.]

411A. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]

No appeal in certain cases when accused pleads guilty

412. Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by ³[* * *] a Court of Session ⁴[or any Metropolitan Magistrate] or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

¹The words and figure "specially empowered under section 30" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

²The word "five" was substituted, for the word "four" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

³The words and comma "the High Court Division," were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

⁴The words "or any Metropolitan Magistrate" were inserted by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which ¹[***] a Court of Session passes a sentence of imprisonment not exceeding one month only, or in which a Court of Session or District Magistrate ²[or Metropolitan Magistrate] or other Magistrate of the first class passes a sentence of fine not exceeding fifty Taka only.

No appeal in petty cases

Explanation—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two hundred Taka only.

No appeal from certain summary convictions

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any punishment therein mentioned is combined with any other punishment, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Proviso to sections 413 and 414

Explanation—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

³[**415A.** Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.]

Special right of appeal in certain cases

¹ The words and letter "the High Court Division passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred Taka only or in which" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

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

³ Section 415A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act XVIII of 1923).

416. [Repealed by section 26 of the Criminal Law Amendment Act, 1923 (Act No. XII of 1923).]

Appeal in case of acquittal

¹[**417.**²(1) Subject to the provisions of sub-section (4), the Government may, in any case, direct the Public Prosecutor to present an appeal—

- (a) to the High Court Division from an original or appellate Order of acquittal passed by any Court of Session;
- (b) to the Court of Session from an original or appellate Order of acquittal passed by any Magistrate.]

³[(2) Notwithstanding anything contained in section 418, if such an order is passed in any case instituted upon complaint, and if the order involves an error of law occasioning failure of justice, the complainant may present an appeal—

- (a) to the High Court Division from an original order of acquittal passed by any Court of Session;
- (b) to the Court of Session from an original order of acquittal passed by any Magistrate.]

(3) No appeal by the complaint from an order of acquittal shall be entertained by the High Court Division ⁴[or a Court of Session] after the expiry of sixty days from the date of the order of acquittal.

(4) If, in any case, the admission of an appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).

Appeal against inadequacy of sentence

417A.(1) The Government may, in any case of conviction on a trial held by any court, direct the Public Prosecutor to present an appeal to the High Court Division against the sentence on the ground of its inadequacy.

¹ Sections 417, 417A and 418 were substituted, for the original sections 417 and 418 by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

² Sub-section (1) was substituted for sub-section (1) by section 5 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1983 (Ordinance No. XXXVII of 1983).

³ Sub-section (2) was substituted for sub-section (2) by section 3 of the Code of Criminal Procedure (Amendment) Act, 2000 (Act No. XLI of 2000).

⁴ The words and letter "or a Court of Session" were inserted by section 3 of the Code of Criminal Procedure (Amendment) Act, 2000 (Act No. XLI of 2000).

(2) A complainant may, in any case of conviction on a trial held by any Court, present an appeal to the Appellate Court against the sentence on the ground of its inadequacy:

Provided that no appeal under this sub-section shall be entertained by the Appellate Court after the expiry of sixty days from the date of conviction.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Appellate 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.

418. An appeal may lie on a matter of fact as well as a matter of law. Appeals on what matters admissible

Explanation—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.]

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against ¹[* * *]. Petition of appeal

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court. Procedure when appellant in jail

421.(1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall pursue the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily: Summary dismissal of appeal

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

¹ The commas, words and figure ", and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Notice of appeal

422. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under ¹[* * *] or section 417, the Appellate Court shall cause a like notice to be given to the accused.

Powers of Appellate Court in disposing of appeal

423.(1) The Appellate Court shall then send for the record of the case, if such record is not already in 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 Public Prosecutor, if he appears, and, in case of an appeal under ²[* * *] section 417, the accused, if he appears, the 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 retried or ³[sent] 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, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or ⁴[sent] for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (3), not so as to enhance the same;

¹ The words, figures, comma and brackets "section 411A, sub-section (2) or" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

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

³ The word "sent" was substituted, for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

⁴ The word "sent" was substituted, for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

¹[(bb) in an appeal for enhancement of sentence, (1) reverse the finding and sentence and acquit or discharge the accused or order him to be retired by a Court competent to try the offence, or (2) alter the finding maintaining the sentence, or (3) with or without altering the finding, alter the nature or the extent, or the nature and extent, or the sentence, so as to enhance or reduce the same;]

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

(d) make any amendment or any consequential or incidental order that may be just or proper ²[:

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.]

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

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than High Court Division:

Judgments of subordinate Appellate Courts

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

425.(1) Whenever a case is decided on appeal by the High Court Division under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding sentence or order recorded or passed by a Magistrate other than

Order by High Court Division on appeal to be certified to lower Court

¹ Clause (bb) was inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

² A colon was substituted for the full-stop at the end of clause (d) and thereafter the provisos were added by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

the ¹[Chief Metropolitan Magistrate or the District Magistrate, the certificate shall be sent through the Chief Metropolitan Magistrate or, as the case may be,] the District Magistrate.

(2) The Court to which the High Court Division certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court Division; and, if necessary, the record shall be amended in accordance therewith.

Suspension of sentence pending appeal. Release of appellant on bail

426.(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court Division in the case of any appeal by a convicted person to a Court subordinate thereto.

(2A) When any person ²[is sentenced to imprisonment for a term not exceeding one year] by a Court, and an appeal lies from that sentence, the Court may, if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section (1) and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(2B) Where High Court Division is satisfied that a convicted person has been granted special leave to appeal to the

¹The words and commas "Chief Metropolitan Magistrate or the District Magistrate, the certificate shall be sent through the Chief Metropolitan Magistrate or, as the case may be," were substituted for the words and comma "District Magistrate, the certificate shall be sent through" by section 2 and Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

²The words "is sentenced to imprisonment for a term not exceeding one year" were substituted for the words "other than a person accused of a non-bailable offence is sentenced to imprisonment" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

¹[Appellate Division of the Supreme Court] against any sentence which it has imposed or maintained, it may if it so thinks fit order that pending the appeal the sentence or order appealed against be suspended, and also, if the said person is in confinement, that he be released on bail.

(3) When the appellant is ultimately sentenced to imprisonment, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

427. When an appeal is presented under ²[section 417 or section 417A, the High Court Division or any other Appellate Court, as the case may be,] issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Arrest of
accused in
appeal from
acquittal

428.(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 High Court Division, by a Court of Session or a Magistrate.

Appellate
Court may
take further
evidence or
direct it to be
taken

(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) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken ³[* * *].

¹ The words "Appellate Division of the Supreme Court" were substituted for the words "Supreme Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words, figures and commas "section 417 or section 417A, the High Court Division or any other Appellate Court, as the case may be," were substituted for the words, figures, commas and brackets "section 411A, sub-section (2), or section 417, the High Court Division" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

³ The semi-colon and words "; but such evidence shall not be taken in the presence of jurors or assessors" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(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).