REVISION (CRIMINAL)

The revisional jurisdiction of the Court u/s 397 CrPC can be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily (*Amit Kapoor Vs. Ramesh Chander*, (2012) 9 SCC 460 (paras 12, 13 & 20). These are not exhaustive classes but merely indicative. One of the inbuilt restrictions is that it should not be exercised against an interim or interlocutory order. Sections 397 to 403 CrPC do not confer a right on a litigant to file revision but the revisional power is only discretionary with the court to see that justice is done in accordance with the recognized principles of criminal jurisprudence (*Malti vs. State of U.P, 2000* CrLJ 4170).

Types of Orders against which Revision can be filed

A court can pass following three types of orders : (i) final : (ii) intermediate : (iii) interlocutory (*Girish Kumar Suneja Vs. CBI*, AIR 2017 SC 3620 (Three-Judge Bench)(para 17). As far as an intermediate order is concerned, court can exercise its revisional jurisdiction since it is not an interlocutory order and the bar of Section 397(2) CrPC is not attracted against an intermediate order. When Section 397(2) CrPC prohibits interference in respect of interlocutory orders, Section 482 CrPC cannot be availed of to achieve the same objective. Order summoning or refusing to summon witnesses u/s 311 CrPC is an interlocutory order within the meaning of Sec. 397(2) CrPC as it does not decide any substantive right of litigating parties. Hence no revision lies against such orders. It is now well settled that in deciding whether an order challenged is interlocutory or not as per Section 397(2) CrPC, the sole test is not whether such order was passed during the interim stage. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceeding, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) CrPC. An order which substantially affects the rights of the accused or decides certain rights of the parties would not be an interlocutory order.

Admission of Revision

Admission of a case does not amount to a decision on merits. It only means a prima facie case for adjudication is made out. When the court has admitted the proceedings without going into the merits of the case and on question of its maintainability, it's only an order in the nature of an interlocutory order, i.e., it is not a "case decided". No rights flow from the order of admission in favour of either of the parties. The question of maintainability of the proceeding (revision, appeal, writ or any other proceedings) may be examined by the court at any stage subsequent to the order passed regarding admission of the case (*Brij Bala vs. Distt. Judge, Kanpur Nagar*, 2006 (65) ALR 238 (Allahabad).

Appreciation of evidence & extent of powers of Revisional court

(i) Appreciation/re-appreciation of evidence not to be done

(ii) Findings of fact not to be upset unless perverse

(iii) Findings of fact not to be substituted

Relying upon its earlier decision in the case of *Amit Kapoor Vs. Ramesh Chander*, (*supra* para 18), the Hon'ble Supreme Court, in the case noted below, has ruled thus : "*Normally, revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of thesame would not be a sufficient ground for interference in such cases.*" (*Vinay Tyagi Vs. Irshad Ali*, (2013) 5 SCC 762 (para 18)

Interference by the Revisional court with the findings of fact

The scope for interference by the revisional court with the findings of fact recorded by the lower Court may be summarized as under :

(i) findings of fact recorded by lower court on an evidence not available on record.

(ii) material evidence, which could have reflected on the merits and the decision of the case, has been ignored by the lower Court

(iii) finding of fact recorded on an evidence not admissible

(iv) material evidence discarded by treating it as inadmissible

(v) finding of fact being perverse in terms of law

(vi) but while disturbing the findings of fact recorded by the lower Court, the revisional court would not proceed to appreciate or re-appreciate the evidence itself. The revisional court would only make its observations on the illegality committed by the lower court in appreciating the evidence and recording findings of fact and by setting right the mistakes of law committed by the lower court, would set aside the findings and the order of the lower court by directing it to re-appreciate the evidence, record fresh findings of fact as per law by keeping in view the observations made by the revisional court and pass fresh orders.

Stay order in Revision when and how to be passed

The Supreme Court has issued following directions regarding the manner of passing of the stay orders and durations thereof in revisions and appeals filed against the orders of the trial courts:

(i)There must be a speaking order while granting stay of the proceedings

(ii)Once an stay order is passed, the challenge should be decided within two to three months and the matter should be taken up on a day today basis

(iii)Stay order should not be passed unconditionally or for indefinite period. Conditions may be imposed.

(iv)Stay order shall automatically lapse after six months if not extended further and the proceeding before the trial court shall automatically commence

(v)Extension of stay order can be passed only by an speaking order show in extra-ordinary situation

(vi) The above directions shall apply to both the civil as well as criminal matters

(vii) The above directions shall apply to both civil and criminal appellate and revisional jurisdictions. (*Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI*, (2018)16 SCC 299 (Three- Judge Bench)

Time-barred Revisions & Condonation of Delay

According to Article 131 of the Limitation Act, 1963, the limitation period for filing revision u/s. 397 CrPC is 90 days from the date of order under challenge. Revisional court can condone the delay u/s 5 of the Limitation Act, 1963 if the delay is satisfactorily explained by the proposed revisionist. If the revisionist was not having knowledge of the order then the limitation period of 90 days to prefer revision would be computed from the date of knowledge of the order. In the cases, noted below, it has been held that a criminal revision cannot be dismissed on a technical ground like limitation otherwise if the order passed by the lower court is otherwise illegal, that illegality will perpetuate and survive if the power of revision is not exercised by the revisional court for the technical reasons like limitation. The revisional court should apply liberal approach while considering the question of limitation in regard to a time barred criminal revision. (*Shilpa vs. Madhukar & others*, 2001 (1) JIC 588 (SC))

Revision—No dismissal in default

After admission of criminal revision, there is no procedure for dismissing the same in default and even if the revisionist is absent, the revision cannot be dismissed in

default but has to be decided on merits.(*Santosh Vs. State of UP*, (2010) 3 SCC (Cri) 307)

Revision by third party or stranger

As the power of revision can be exercised by the revisional court suo motu, hence even an outsider, stranger or third party can question the legality of the order passed by the lower court and file criminal revision against the order. (*K. Pandurangan vs. S.S.R. Velusamy*, (2003) 8 SCC 625)

Second Revision

In view of the provisions u/s 397(3) CrPC, a second revision against the same order with the same prayer is not maintainable. If the revision preferred against the order of the Magistrate is dismissed by the Sessions Judge, second revision before the High Court is not maintainable u/s 397, 399, 401 CrPC. The High Court and the Sessions Judge have got concurrent jurisdiction and a party can invoke the revisional jurisdiction of any one of the two courts but not of both. It is left to the party concerned to avail remedy from any of the two courts but not from both. The revisionist can file his revision in the High Court directly. It is not necessary that in the first instance the revision should be filed before the Sessions Judge. (*Kailash Verma vs. Punjab State Civil Supplies Corporation*, (2005) 2 SCC 571)

Revisional Court may consider material evidence

In the case of *Harshendra Kumar D. Vs. Rebatilata Koley*, 2011 CrLJ 1626 (SC), the Director of a company who had not issued the cheque and had resigned from the company much before the date of issue of the cheque but even then he was prosecuted by the complainant for offences u/s 138 read with 141 of the Negotiable Instruments Act, 1881 by filing a complaint before the Magistrate. Quashing the criminal proceedings initiated against the Director/ accused, the Hon'ble Supreme Court has held that criminal prosecution is a serious matter. It affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. Public documents or material relied upon by accused which is beyond suspicion can be taken into consideration by the Court (High Court) while exercising revisional powers u/s 397 or 482 CrPC.

Hearing of the proposed accused u/s 156(3) CrPC in criminal revision mandatory

Where an application u/s 156(3) CrPC was rejected by the Magistrate and the revision against the order of the Magistrate was decided by the revisional court (High court) by not hearing and issuing notice to the (proposed) accused, referring the provisions of sections 397, 399, 401(2) CrPC, it has been held by the Hon'ble Supreme Court that the principles of 'audi alteram partem' are applicable in criminal revisions and the(proposed) accused must be made party along with the State and heard. Revisional court should give opportunity of hearing to the party against whom it proposes to pass some adverse order. (*Jagannath Verma Vs. State of UP*, AIR 2014 All 214)