

Powers of Revision under Indian Constitution

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Abstract

Apart from entertaining appeal from the subordinate courts, the High Court can call the records from the subordinate criminal courts for its examination. The power is termed as the reversionary power of court. The High court can call the records on its own or on an application made in that regard. The powers of revision cannot be exercised in relation to any interim order (temporary order passed pending final disposal of a case) passed in any proceeding.

The power of revision can be exercised by the High Court on two grounds; firstly, where the finding, sentence or order of the High Court is illegal or improper, and secondly where the proceedings are irregular.²

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²Durga Das Basu, V. R. Manohar, Bhagabati Prosad Banerjee, Shakeel Ahmad Kham, introduction to the constitution of India, P. 154 (20th Ed., Lexis Nexis Butterworths Wadhwa, 2008)(1964)

Introduction

The Twenty- Sixth day of January 1950, was a red letter day in the long and chequered history of India. For, on that day the present Constitution of India was brought into force which announced to the world the birth of a new republic. The Indian Constitution is considered to be the largest, most detailed written constitution in the world and addresses all and every aspects of the Indian polity; its functions, duties and various rights and other legal aspects. The functions and duties of the three tiers of the Government viz. the executive, legislature and judiciary have been elaborately explained. The Constitution is the fundamental law of the land; hence it answers the most basic ambiguities that may arise whilst studying various statutes. The Constitution empowers both Supreme Court and HCs to issue writs under Article 32 and Article 226 respectively. Also, both the courts are granted appellate jurisdiction. The Supreme Court and High Courts have been vested with the power to review as well. However, the revisionary power has been vested with the High Courts only. High courts are instituted as constitutional courts under Part VI, Chapter V, Article 214 of the Indian Constitution.

Hypothesis

The Constitution of India provides the most basic legal principles and ideas that contribute towards the enactment of subsequent statutes and laws. But many a time, there may be minute discrepancy or an oblivious principle in the basic law. The Constitution of India, to such a degree is turning a blind eye towards the revisionary power of the High Courts. Though the appellate jurisdiction of the High Court has been dealt with explicitly, there is no reference whatsoever to the revisionary power of the said Courts. However, the power has been vastly dealt within the procedural laws namely the Civil Procedure Code, 1908 and Criminal Procedure Code, 1973. The accumulation and the judgments of more and more case

laws would pave way to the Court to make a proper reference to the revisionary power of the High Courts in the light of the Constitutional provisions mentioned.

Research Methodology

The following research paper is the result of distinct study and comprehensive reading of the respective sections and articles pertaining to the concept of revision.

Initially, the research began from the Constitution of India 1950, Article 214, which speaks of the setting up of High Courts in each States. Reading further, it was understood that the Constitution is almost silent with regard to revisionary jurisdiction of the High Courts. The concept of revision is explicitly dealt within under Section 115 of the Civil Procedure Code, 1908 and Sections 397 to 402 of the Criminal Procedure Code, 1973.

In the furtherance of the research, various relevant indictments of the Apex Court have been mentioned. The case laws provide a concrete foundation and strong base to rely upon when considering the said revisionary power of the High Courts.

Insofar as Constitution is concerned, the provisions under Articles 214, 226 and 227 have a narrow, moreover a vague contribution towards the power of revision.

The Revisionary Power

Articles 214-237 deal with 'State Judiciary'. The Judiciary in States consists of a High Court and a system of courts subordinate to the High Court. Article 214 says that there shall be a High Court in each state. The High Court is conferred with various jurisdictions and acts as a court of record; competent to issue writs etc. the High Court also has the right to consider revision.

Revision under the Civil Procedure Code, 1908

Section 115 of the Civil Procedure Code, 1908 deals with revision in civil cases.³

Revision in its plain and simple meaning would mean to examine with a view to corrections. According to Section 115 of the Code, the High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto and if such subordinate court appears to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested; or to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.⁴

The High Court shall not under the Section vary or reverse any order except in the following cases:

1. The order if it has been made in favour of the party applying for revision would have finally disposed of the suit or other proceeding; or
2. The order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

The High Court shall not under this Section vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto. From the explanation in the Section it is clear that the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.⁵

The scope of the law is that the powers under the Section are intended to meet the ends of justice and where substantial justice has been rendered by the order of the lower court, the High Court will not interfere, nor will it interfere on finding of fact.

³See S. 115, Civil Procedure Code, 1908.

⁴See *ibid*.

⁵Ray Sukumar, the code of civil procedure, Pp. 302-308 (Universal Law Publishing, 2008)

A revision petition under the Section will not be entertained by the High Court except on any of the above mentioned grounds. It can, however, issue writs of certiorari, and other prerogative writs under Article 226 of the Constitution.⁶

Section 115 lays down that only when some illegality or material irregularity is committed by the subordinate court in the matter of exercise of jurisdiction that High Court can interfere in revision. By the amendment of the Section by 1976 amendment a proviso has been added to sub-section (1). In view of such proviso only such order may be interfered with which is not appealable and which attracts either proviso (a) or (b) and any of the clauses of the Section.⁷

High Court in revision cannot make re-appreciation of evidence. It cannot interfere with a finding of fact unless the same is perverse and on the ground that a different view on the appreciation of evidence is possible⁸. But a finding of fact overlooking material evidence is an error of law and if such finding occasions failure of justice, the High Court can interfere in revision. Even if the conclusion of fact or law is erroneous unless such conclusion affects the jurisdiction it cannot be interfered with in revision.⁹

Case laws

In *Venubhai v. Prohba*¹⁰, it was held that the power conferred on the High Court under Section 115 Civil Procedure Code, 1908 is entirely discretionary.

In *Jagadish Prasad v. Ganga Prasad*¹¹, the SC repelling the contention that it was not competent for the High Court to interfere in revision with a finding of fact, has held “if an

⁶See Constitution of India, 1950.

⁷Atul Chandra Ganguly and M. R. Mallick, ganguly’s civil court practice and procedure, Pp. 320-330 (14th Ed., Eastern Law House, 2016)(1989)

⁸See *ibid.*

⁹Jatindra Kumar Das, code of civil procedure, P. 425 ()

¹⁰AIR 1984 Bom. 403.

¹¹AIR 1062 SC 646

erroneous decision of a subordinate court, resulted in its exercising jurisdiction not vested in it by law, or failing to exercising jurisdiction not vested in it by law, or failing to exercise the jurisdiction so vested or acting, with material irregularity or illegality in the exercise of its jurisdiction a case for the exercise of powers of revision by the High Court is made out.”

The Criminal Procedure Code, 1973

Chapter XXX of the Code provides for the powers for reference and revision¹². Sections 397 to 402 deal with revisional powers under the Code and they are to be read together. Section 397 empowers the High Court or any Sessions Judge to call for the record of an inferior criminal court for the purpose of satisfying themselves as to the legality and regulation of any proceedings or order made therein. It gives no power to set aside the error, or illegality when any illegality which justifies rectification is found upon examination of record i.e. the machinery for the exercise of the power is provided under Sections 398 to 402. The object is to set right the patent defect or error. In the absence of some well founded suspicion it is inexpedient for the High Court or Sessions Court to scrutinize orders of discharge and other orders, which upon their face bear token or careful consideration and appears good and lawful.¹³

On careful comprehension and reading of Sections 397, 399, 401 and 402, it will be seen that the concurrent jurisdiction in the matter of revision is conferred by Section 397 sub-clause I on the High Court and the Sessions Court. An aggrieved party has been given the option to choose any one of the two forums for filing revision.¹⁴

General Powers of revision:

¹²See Chapter XXX, Criminal Procedure Code,1973

¹³R. V. Kelkar, criminal procedure, Pp. 402-403 (3rd Ed., Eastern Book Company, 1993)

¹⁴Dhirajlal Keshavlal Thakore, the code of criminal procedure, Pp. 145-148 (22nd Ed., Lexis Nexis, 2017)(1980)

1. Section 397:- The power to call for records of the inferior court with a view to being satisfied as to the legality of any order or sentence and the regularity of any proceedings is conferred concurrently on the High Court and the Court of Sessions.
2. Section 398:- On examining the records, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate to make and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make further inquiry into a complaint dismissed or into the case of an accused discharged.
3. Section 399:- In any other case of illegality, irregularity or error in any proceedings or order made therein, both the High Court and the Sessions Courts have equal and full powers of disposal in respect of cases before inferior courts which have been called for by them or which have otherwise come to their knowledge and if an application has been made by a party either to the High Court or to the Sessions Judge, no further application shall be entertained by the other.
4. The powers of the High Court and the Sessions Judge to deal with such cases or with cases which have been called for by them or which have otherwise come to their knowledge, are contained in Section 399 to 401. They can exercise any oth the powers of a Court of Appeal.

Limitations¹⁵:

1. Section 397 sub-clause 2:- the powers of revision shall not be exercised in relation to interlocutory orders.
2. Section 401(4):- where an appeal lies and no appeal is brought, no revision is maintainable at the instance of the party who could have appealed.
3. Section 401(3):- a finding of acquittal cannot be converted into conviction.

¹⁵*Infra* n. 6, P. 148.

Besides the above residuary power under the Code, the High Court has power of judicial superintendence over all Courts and Tribunals under Article 227 of the Constitution in respect of grave dereliction of duty or flagrant abuse of or excess of authority or violation of the elementary principles of justice.

Case laws

In *Wariya v. State*¹⁶, it was held that the prerogative under Article 227 has to be exercised most sparingly and only in appropriate cases.

In *Kesavan v. Kerala*¹⁷, it was held that on reading of sections 397, 399, 401 and 402 it will be seen that a concurrent jurisdiction in the matter of revision is, however, conferred by section 397(1) on the High Court and Sessions Court. An aggrieved party has been given the option to choose anyone of the two forums for filing revision. The remedy against conflicting positions and resulting chaos- is one party moves the Sessions Court and another the High Court in the same proceeding lies in an appropriate resort to the provisions in Section 401.

In *Caetane v. State*¹⁸, it was held that as a broad proposition, revisional inference may be justified, where the decision is grossly erroneous, there is no compliance with the provision of law, the finding of fact affecting the decision is not based on evidence, the material evidence of the party is not considered, and judicial discretion is exercised arbitrarily or perversely and the Court further held that these instances are illustrative and not exhaustive.

Who may apply for Revision?

There is a consensus of opinion that unless the High Court acts *suo motu*, it can be moved to exercise its power of revision only when an aggrieved party makes an application under section 397(1) to call for the records, such aggrieved party may be the accused himself or the

¹⁶AIR 1954 SC 215

¹⁷AIR 1978 Ker. 131

¹⁸AIR 1969 Goa 32(FB)

complainant or some other person. When a case has been instituted on police report, a private party cannot, therefore, make such application and move the High Court to call for the records and to exercise its power under section 401, in revision unless there are exceptional circumstances. But when the records come up before the High Court on appeal against conviction by the accused, the High court entertained a revision petition for enhancement of the sentence filed by a brother of the deceased and enhanced the sentence, after issuing notice upon the accused. The Supreme Court upheld this order as a *suo motu* exercise of its revisional power, for the purpose of which anybody could draw the attention of the High Court to the illegality or irregularity in the order or sentence. In short, the application of a person who has no locus standi may be treated as information to induce the High Court to precede *suo motu* in a present case. Section 401(4) says that when a party is entitled to appeal against an order, it is not entitled to apply in revision without first appealing against such order. Hence, where a state government has failed to appeal against an order or acquittal, it cannot move in revision against that order. Under sub section (4) of section 378, a complainant is entitled to appeal if (a) the case has not been instituted on his complaint and (b) if the High Court grants him special leave to file such appeal. Hence, in such a case, the complainant cannot apply for revision without first seeking the special leave to appeal from the High Court. The complainant, in cases other than the above, or even a third party, may apply for revision, provided only there are exceptional grounds such as: Absence of jurisdiction, Miscarriage of Justice.¹⁹

Observation:

In short it can be said that the following conditions must be satisfied before the revisional power can be exercised:

1. There must be a case decided by the subordinate court.

¹⁹Shiv Kumar Deogra, criminal justice administration in India, P. 468(Deep and Deep Publications, 2009)

2. The court deciding the case must be one subordinate to the High Court.
3. The decision must be one in which no appeal lies.
4. The subordinate court must have in the decision of the case: exercised jurisdiction not vested in it by law; or failed to exercise a jurisdiction vested in it; or must have acted in the exercise of its jurisdiction illegally, or with material irregularity.

Conclusion

A revision is nonetheless an appeal to High Court for dispensation of justice, but circumscribed by jurisdiction as provided in Section 115 of the Civil Procedure Code, 1908 and Sections 397 to 402 of the Criminal Procedure Code, 1973. The difference between an appeal or, revision lies in the limit and scope of jurisdiction. The right of appeal is one of entering a Superior Court and invoking its aid and interposition to redress the error of Court inferior. Two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior court and the power on the part of the former to review decisions of the latter. When the aid of High Court is invoked on the revision- side, it is done because it is a Superior Court and it can interfere for the purpose of rectifying the error of the Court below. The corresponding legal provisions circumscribe the limits of revisional jurisdiction but the jurisdiction is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court.