

A CRITICAL ANALYSIS ON THE POWER OF HIGH COURT IN TRANSFER OF CASES AND APPEALS

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ABSTRACT:

The Constitution of India has not made any clear and detailed description of the powers and functions of the High Court as it has done in the case of the Supreme Court. The Constitution says that the Jurisdiction of the High Court shall be the same as immediately before the commencement of the Constitution, subject to the provisions of the constitution and the laws made by the appropriate legislature. Besides, civil and criminal cases are also supposed to belong to the original jurisdiction. But only the High Courts at Kolkata, Mumbai and Chennai can have the first trial in civil and criminal cases. The original criminal jurisdiction of the High Court has, however, been abolished by the Criminal Procedure code, 1973. At present the criminal cases are tried in the city sessions Courts in Kolkata, Mumbai and Chennai. The Supreme Court is the highest court of criminal appeal but the right to prefer an appeal to the Supreme Court lies in some exceptional cases. The original court of criminal appeal is the High Court as per the Code of Criminal Procedure. The Supreme Court has the largest authority regarding the administrative functions of all its subordinate court. The judiciary has been paramount institution for determination of any legal dispute. The judiciary has been a watch dog to keep an eye on the legislature and executive authorities to control their arbitrary actions and to keep a check on their activities which may be either driven by their whimsical or by any hidden

interest. The judicial authorities are vested within various courts and at many levels as deemed to be proper by the respective High courts. The Indian judiciary has a huge extravagant burden on its shoulder of pendency. In a broader classification, the trails could be separated in two classes namely- Criminal wrongs are those which possess the potentiality of damaging the society at large. Generally, criminal acts are those acts which have an overall impact on the society and influence a major share of the society with its occurrence. The criminal law covers all the offences and crimes under different laws and statutes. The criminal case against an individual may be instituted by a First information report (F.I.R) or by presenting a private complaint against a person.

OBJECTIVE:

- To trace the power of high court
- To bring out the grounds of transfer
- To bring out the grounds of appeal
- To trace the interest of the public in transferring the case

HYPOTHESIS:

No universal or hard and fast rule can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case.

RESEARCH METHODOLOGY:

This is a doctrinal research and materials collected are secondary data.

Research question: Whether the implementation of principles laid down by the Indian judiciary will lead to fair trail ?

INTRODUCTION:

The powers and functions of the High Court can be divided as follows:**Original Jurisdiction:**Original jurisdiction in relation to high court refers to the authority of the high court to hear and decide cases for the first time .All matters relating to revenues are included in the original jurisdiction of the High court.Besides, civil and criminal cases are also supposed to belong to the original jurisdiction. But only the High Courts at Kolkata, Mumbai and Chennai can have the first trial in civil and criminal cases. The original criminal jurisdiction of the High Court has, however, been abolished by the Criminal Procedure code, 1973. At present the criminal cases are tried in the city sessions Courts in Kolkata, Mumbai and Chennai.**Appellate Jurisdiction:**Appellate jurisdiction in relation to High Court refers to the power of the High Court to review the decisions of Lower courts. The High Court is the highest court of appeal in the state. It has appellate jurisdiction in civil and criminal cases.In civil cases, appeal can be made to the High Court against the decisions of the District Judges and the Subordinate Judges. Again, when any court subordinate to the High Court decides an appeal from the decision of an inferior court, a second appeal can be made to the High Court only on question of law and procedure. Besides, appeal from the decision of a single Judge of the High Court itself also lies to the High Court. In criminal cases appeals against the decisions of : **Powers of issuing Directions, Order or Writs:**The High Court has been empowered to issue writs of habeas corpus, mandamus, and prohibition certiorari and quo warranto for the enforcement of the fundamental rights and ‘for other purposes’. The Supreme Court can issue the writs only for the enforcement of fundamental rights and not for other purposes. The power of the High Court to issue writs in the nature of habeas corpus cannot be curtailed even during emergency.**Judging the validity of laws:**In the original Constitution the High Courts were given powers of judging the validity of the Central and the State laws. But the 42nd Amendment of the Constitution took away the powers of the High Courts to determine the validity of the central laws and put various conditions on their powers of judging the validity of the State laws. However, the 43rd Constitutional (Amendment) Act, 1978 has restored these powers to the High Courts.**Powers of superintendence:**Every High Court has a general power of superintendence over all the lower courts and tribunals within its jurisdiction except military courts and tribunals. By virtue of this power the High Court can call for returns from such courts; make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and prescribe forms in

which books, entries and accounts shall be kept by the officers of any such court. Besides the above powers, the High Court performs some other functions: Like the Supreme Court, the High Court also acts as a Court of Record, It has the power to punish for contempt of itself, The High Court can frame the required rules to carry out its judicial functions. **The aim of the study is to find whether the implementation of principles laid down by the Indian judiciary will lead to fair trial or not.**

KEYWORDS: constitution, jurisdiction, legislature, high court, Supreme Court

HIGH COURT POWER IN TRANSFER OF CASES

The judiciary has been paramount institution for determination of any legal dispute. The judiciary has been a watch dog to keep an eye on the legislature and executive authorities to control their arbitrary actions and to keep a check on their activities which may be either driven by their whimsical or by any hidden interest. The judicial authorities are vested within various courts and at many levels as deemed to be proper by the respective High courts. The Indian judiciary has a huge extravagant burden on its shoulder of pendency. In a broader classification, the trails could be separated in two classes namely- Criminal wrongs are those which possess the potentiality of damaging the society at large. Generally, criminal acts are those acts which have an overall impact on the society and influence a major share of the society with its occurrence. The criminal law covers all the offences and crimes under different laws and statutes. The criminal case against an individual may be instituted by a First information report (F.I.R) or by presenting a private complaint against a person. Whenever a complaint is preferred to any magistrate he may after taking cognizance and observing any substance in the complaint may issue necessary instruction for further investigation and fact finding of the case. The burden of the proof in such criminal cases lies on the prosecution which is here referred as the state to establish its case far beyond reasonable doubt against the offender. In case if the prosecution fails to do that the benefit of doubt would flow towards the accused. The party which may be dissatisfied by the judgment of the court may approach the competent superior authority to file an appeal against the order of trial court. The punitive consequence of criminal law would be fine or imprisonment of may be even both the criminal court also have superior jurisdiction to order the offender to pay the victim against his crime as under victim compensations scheme.

The example of criminal laws are Indian Penal Code, 1860, Criminal procedure code, 1973, Narcotic drugs and psychotropic substance, 1985. The entire judiciary is viewed with utmost respect and with an expectation that the judiciary would do very fair and equitable justice to the person coming before them or pleading for genuine redressal of any complaint of grievance. The court should always maintain a fair view that court should not only do fair justice but the justice should be pronounced in such a manner that a clear message should be made to everyone that justice is made. The judiciary is the most sanctified body to deliver justice and has always maintained a very strict view regarding fairness in trial procedures and trial fairness. So in order to protect the reputation of the courts and the maintain high order of moral standards between the members of judiciary the code of Criminal Procedure and the civil procedure code have enough reasonable grounds to transfer cases from one court to another court. The main intention of delivering justice or to decide a matter is to address a public sentiment although there are various provisions regarding appeal. But such practices would impart tremendous pressure on the mechanism of judiciary and the judiciary would further be burdened with more pendency and delayed justice to all which may consequently create more dispassion and unrest about judicial processes. So to address all such burning issue the statutes already provides certain provisions regarding the transfer of cases from one court of trial to another court of trial.

Power of criminal courts to transfer cases

The Supreme Court is the highest court of criminal appeal but the right to prefer an appeal to the Supreme Court lies in some exceptional cases. The original court of criminal appeal is the High Court as per the Code of Criminal Procedure. The Supreme Court has the largest authority regarding the administrative functions of all its subordinate court.

Section 406 Cr. P. C 1973 – Power of Supreme Court to transfer cases and appeals

The Supreme Court is vested with the widest discretionary power to make any such order to transfer any specific case or appeal or any matter lying pending before one high court to another high court to meet up the end of justice and satisfy the principle of fair justice. The application to transfer such case from one High court to another high court would be moved by

any person who is under apprehension of any unfair action or he may not find proper justice for him or Attorney General of India. The provision made under section 406 of Cr. P. C majorly relies upon the discretion of the Supreme Court. The applicant is not under any obligation to establish conclusively that in absence of this transfer the interest of justice regarding him would fail. The applicant will have to reasonably substantiate his contentions regarding the application. The Supreme Court is not only vested with the authority to transfer files from one High court to another High Court. The Supreme Court also has authority to the transfer any case from one court to another court which is in subordination to the Supreme Court. Any objection if arose by the court under which the matter is lying pending. Although the trail court may ensure the Supreme Court about maintaining the principle of fair and equity, but the Supreme Court would take all reasonable measure to transfer that case to some other court which may be either to the court of same competence of may be court lower or higher competence.

Section 407. Cr. P. C 1973- Power of High Court to transfer cases and appeals.

The high court is also vested with the similar authorities to transfer a case from one court of its sub ordinance to another court of its sub ordinance or the high court may even the try the case by itself. The following are the ground on which an application to transfer the case could be made to the high court.

1. When the court could reasonably apprehend that the fairness of the trail would be prejudiced by the trail if conducted with the same court which has been trying the case currently.
2. When the high court is of the opinion that the trail of the case may involve decision of some questions which are substantial question of law and could only be dealt by the high court in expedite manner.
3. The High court may take into consideration of the convenience of the parties for such to meet up the end of justice and towards the experience of justice for both the parties.

The High court after receiving any such application from the applicant the court may even if require conduct an enquiry and then decide whether such transfer is in the interest of justice or it is filed with an intention to defeat the justice. If the grounds of filing such application are found

to be false, frivolous or vexatious the court would dismiss the application. The Attorney general of the state may also file application of such transfer to the High court with an affidavit which on oath would again affirm the contents of the application. The trial court can also refer to the High court any such cases which may need transfer from one court to another to meet the ends of justice.

Section 408. Cr.P.C – Power of Sessions Judge to transfer cases and appeals.

In sub ordinance to the High court the session court also have vested authority to transfer one from one court to another under his jurisdiction within his session division. This order may be made by the court for better delivery of justice and settle the sentiment of the victim. An application shall be preferred on following grounds:-

1. When the court is reasonably satisfied that the subordinate court is unable to deliver justice to the aggrieved. The sessions court by his own accord may take all reasonable measure for expedite delivery of justice by the court.
2. The application could be filed by the lower court to the sessions court which may demand such transfer or by the own accord of the court. Or by the application moved by the parties involved within that course, or the court may even consider the report of the lower court which favors or recommends such transfer from one court to another. To deliver justice.
3. The applications which is made to the sessions court should be in consistence with the provisions of 407 (3) (4) (5) (6) (7) and (9). Before deciding any such application of transfer the copy of the application should be provided to the public prosecutor and with a reasonable opportunity to argue on the application filed by the applicant. If in case this exercise is not performed in the same manner the application becomes void. No further actions could take place from thereof.

Section 409 Cr. P. C Withdrawal of cases and appeals by Sessions Judges.

Further in section 409 Cr. P. C the Sessions judge is vested with additional administrative functions regarding transfer of case from one court under his subordination to another court under his subordination under following circumstances:-

1. The Sessions judge can withdraw cases and appeals from any of the judges under his subordination. And after obtaining such transfer file from the assistant Sessions court or from the Court of Chief Judicial Magistrate.
2. The Sessions judges also have authority to recall or withdraw any appeal which is lying pending before any Add. Sessions judge. After obtaining such file from transfer the Sessions court may order it to be made over to any other Add. Sessions judge.
- When any of such withdrawal affected under sub section 1 and 2 of section 409 Cr.P.C. the sessions judge may personally keep the matter with himself and then further the case would be tried in his court or may act in accordance to the provisions of this act.

Section 410 Cr.P.C Withdrawal of cases by Judicial Magistrates.

The Chief judicial magistrate or the Chief metropolitan magistrate are vested with the authority to withdraw any case from any judicial magistrate either first class or second class which is in subordination to him and may inquire into the substance of the trial conducted by the magistrate subordinate to him or may even transfer the trial from that judicial magistrates court to his court. In furtherance the Chief Judicial Magistrate can also authorize or further refer such inquiry to any magistrate under his subordination.

Any judicial magistrate may under the light of section 192(2) of the Cr.P.C can enquire into any case which is made over to him from any other judicial magistrate.

The grounds on which the cases can be transferred

The following are the grounds on which a case could be transferred from one court to another court.

1. To meet the ends of justice :- It is the utmost duty of the court to take all such measures to meet up the ends of justice and to pronounce the judgment which should also send a good message in the society that justice was not only done it was done with an impact that it appears that justice is done. The court is the most trusted and sacred institution. And every person holds a very high relative position and respect for court and its decisions. So the courts have extra moral obligation to keep the spirit of trust and confidence alive within this machinery. This ground to meet the ends of justice have a wide connotations it could be easily understood that this authority would have high degrees of discretionary powers. Which could be used in accordance with the factual quantum to provide justice to all the subject litigants. The factual matrix of every trail weather civil or criminal proceedings is quite different so in order to ascertain a pre-managed situation for dealing may not ensure a fair trial or may even end up causing irreparable loss to the interest of the litigants. Therefore the court has been vested with such discretionary authority to determine such question regarding transfer of court.
2. As per the inquiry report of any superior judicial officer such as any Chief judicial magistrate or any sessions judge the trail must not be conducted by a particular magistrate or any other officer such a report shall also be deemed to be a valid ground for such transfer of a case from one court to another.
3. The trail court deems it fit to be transferred from its purview or the determination of the trail may involve such substantial question of law. Determining substantial question of law far above its jurisdiction would render the complete trail fruitless.
4. The court have a limited jurisdiction over the subject matter of the dispute in such limited or shared juridical issue the court trying the matter will have a liberty to transfer the case to the court which have competent jurisdiction to try that matter conclusively so that the complete trail could not be failed because of lack of complete jurisdiction.
5. Mutual collision between the party and other judicial officer. The possibility of corruption is no stranger to the judicial fraternity. in such cases to avoid the failure of

interest of the actual aggrieved party between the litigants the court provides reasonable opportunity to the party which may have such apprehension.

6. The judicial officer being engaged or involved in the litigation by some or the other. In such scenario the litigant parties have complete freedom to approach the authorities for avoiding any collision of interest when capitalized through any characterized persons.
7. The judicial officer may be made as witness. If any judicial person has been made as a witness to any trial this surfaces the end of the ability of that person to conduct the trial. Such actions may amount to breach of ordinary prudence of fair trial and may impeach the interest of justice.
8. When the court or any judicial authority is working in contravention to the principles of natural justice. Any if such breach when reported to the authority continues to happen the aggrieved party would be free to take shelter for preferring transfer of case.
9. Any mutual disturbance or unethical relationship between the lawyer or the judicial officer may also prefer an application of transfer of case from one court to another.

HIGH COURT POWER IN APPEAL

CRIMINAL PROCEDURE

The term "appeal" has not been defined in the code. According to the dictionary meaning, an appeal is a complaint or grievance to a superior court for reconsideration or review of a decision, verdict or sentence of a lower court. It has been said that every human being is fallible and a judge is not an exception. It is thus possible that even a judge may err or commit mistake and his decision may be wrong or faulty. Article 25 of the Constitution Of India guarantees life and liberty to every citizen, small or big, rich or poor, as one of the Fundamental Rights. It is therefore, necessary that a person aggrieved by an order of the court of the first instance may be able to challenge it by preferring an appeal. An appeal is a method of correction of manly error or solution of human frailty.

A right of Appeal is not a natural or inherent right. It is a statutory right and must be governed by the statute which grants it.

SECTION 372 provides, no appeal lies except otherwise provided by the Code or by any other law for the time being in force. Under Articles 132, 134 and 136 of the Constitution of India, it may be possible to present an appeal to the Supreme Court against the order of acquittal passed by the High Court.

SECTION 373 – APPLIES TO APPEALS FROM

1. Orders requiring security for keeping peace or good behavior and
2. Against order refusing to accept or rejecting to accept or rejecting a surety under s. 121.

The appeal lies to Court of Session, except, of course, in cases where under sub-s. (2) Or (4) of S. 122, the proceedings are already laid before the Session Judge.

SECTION 374: APPEALS FROM CONVICTIONS

- Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.
- 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
- Save as otherwise provided in sub-section (2), any person,
 - convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class,
 - sentenced under section 325, or
 - 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.

While disposing of appeals from the sentences of the Sessions Court under this Section, the High Court should specify the reasons for rejection of appeal and should not reject it summarily. This will enable the Supreme Court to know the view of the High Court, in case the appellant moves the Supreme Court in appeal. For computing the sentence of imprisonment for seven years for the purpose of ascertaining the appellate forum under Section 374 (2), the sentence in default of payment of a fine is not to be added to the substantive sentence of imprisonment.

An appeal from an order of acquittal must be filed within the period of limitation prescribed by Article 114 of the Schedule of the Limitation Act, 1963. For the extension of the period of limitation, and for exclusion of time in computing the period of limitation, Sections 5 and 12 of the Limitation Act, 1963 would be useful.

NO RIGHT OF APPEAL

Section 375 and 376 bar appeals in certain cases, though a provision of Revision is maintainable. Thus no appeal shall lie-

- Where a High Court passes a sentence of imprisonment not exceeding six months or fine not exceeding one thousand rupees or both;
- Where a Court of Session or a Metropolitan Magistrate passes a sentence of imprisonment not exceeding three months or fine not exceeding two hundred rupees or both;
- Where a Magistrate of the First Class passes a sentence of fine not exceeding one hundred rupees; or
- Where in a summary case, a Magistrate passes a sentence of fine not exceeding two hundred rupees.

APPEAL FOR ENHANCEMENT OF SENTENCE

Section 377 confers right on the Government to file an appeal against the inadequacy of sentence awarded by any court other than a High court. If the sentence appears to be manifestly inadequate resulting in failure of justice, the appellate court can interfere with it and can enhance the sentence. But at the same time, the high court can also exercise its revisional jurisdiction, suo motto call for the record and enhance the sentence in appropriate cases after giving an opportunity to the accused The appellate court must pass a speaking order for enhancing the sentence. A bold statement that the ends of justice demanded enhancement of sentence was held insufficient by courts.

An appeal under Section 377 must be filed by the State within a period of 60 days and the contention of the State that it was under a mistaken belief that period of limitation is ninety days would be no excuse for condonation of the delay.

APPEAL IN CASE OF ACQUITTAL

Under Articles 132, 134 and 136 of the Constitution of India, it may be possible to present an appeal to the Supreme Court against the order of acquittal passed by the High Court. An appeal from an order of acquittal must be filed within the period of limitation prescribed by Article 114 of the Schedule of the Limitation Act, 1963. For the extension of the period of limitation, and for exclusion of time in computing the period of limitation, Sections 5 and 12 of the Limitation Act, 1963 would be useful.

Appeal against an order of acquittal is an extraordinary remedy. In exercising this power the High Court should give proper weight and consideration to “**Very substantial and compelling reasons**”.

“Very substantial and compelling reasons” exist when:

- The trial court’s conclusion with regard to the facts is palpably wrong;
- The trial court’s decision was based on an incorrect view of law;
- The trial court’s judgment is likely to result in “grave miscarriage of justice”;
- The entire approach of the trial court in dealing with the evidence was patently illegal;
- The trial court’s judgment was manifestly unjust and unreasonable;
- The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.
- This list is intended to be illustrative, not exhaustive.

The Appellate Court must always give proper weight and consideration to the findings of the trial court. If two reasonable views can be reached – one that leads to acquittal, the other to conviction – the High Court’s/appellate courts must rule in favour of the accused.

POWERS OF APPELLATE COURT IN APPEAL AGAINST ACQUITTAL

In Chandrappa & Others v. State of Karnataka Supreme Court held:

1. An appellate court has full power to review, re-appreciate and reconsiders the evidence upon which the order of acquittal is founded.

2. The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on the 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.
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 phraseology are more in the nature of “flourishes of language” to emphasize 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 is 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.”

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.

An appeal to would lie to the Supreme Court as a matter of right when High Court, on appeal,

1. Reversed an order of Acquittal of an accused person and
2. Convicted and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more.

In other cases appeal can be filed, if the High Court certifies that the case is a fit one for appeal to the Supreme Court. Only grave injustice manifest on record can induce the Supreme Court to interfere with the concurrent finding of guilt of Courts below. The Court would be slow in reversing the finding entered by the High Court unless there is a perverse and erroneous

appreciation of evidence. If the High Court, for acquitting the accused has given certain tenable reasons, the Supreme Court would not be justified in interfering with such acquittal. The word “acquittal” doesn’t mean that the trial must have ended in a complete acquittal but would also include the case where an accused has been acquitted of the charge of murder and has been convicted of a lesser offense.

SECTION 380- SPECIAL RIGHT OF APPEAL IN CERTAIN CASES

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 person, all or any of the persons convicted at such trial shall have a right of appeal.

Form of Appeal -SECTION 382 – Petition of appeal.

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. A copy of the judgment or order means a certified copy. The court has, however, discretion to dispense with the copy of the judgment.

SECTION 383 – APPEAL FROM JAIL

Where a convict is in jail and intends to challenge his conviction, he can file an appeal from jail by presenting it to the officer in charge of the jail. It is the duty of the jail officer to forward such appeal to an appropriate court. No Jail Appeal can be dismissed without affording the reasonable opportunity to the appellate court of being heard.

SECTION 384 – Summary Dismissal of Appeal or Dismissal in Limine

- If upon examining the petition of appeal and copy of the judgment received under section 382 or section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily.

- **DISMISSAL IN LIMINE (U/S 384)**

The Appellate court's power to dismiss an appeal must be exercised sparingly and with great circumspection. The Apex court has dealt with cases where the summary dismissal of criminal appeal is permissible. Even if the records of the case is destroyed or is not available, it would justify acquittal. **Bolin v. Jagdish (2005) AIR 2005 SC 1872; State v. Abhai Roy (2004)4 SCC 6**

SECTION 385 – Procedure for hearing of the appeal which has been admitted and not dismissed summarily under Section 384

The section lays down the procedure for hearing of the appeal which has been admitted and not dismissed summarily under Section 384.

An order of the High Court setting aside the acquittal of the accused in appeal without notice having been sent to the accused was held to be illegal. The accused must be heard and his appearance must be ensured while disposing of the appeal.

Where the appeal is not dismissed summarily under Section 384, the Appellate Court is bound to call for the record if such record has not already been sent by the Court and then give a hearing to the parties. However, the Court may dispose of the appeal even without asking for the record where the appeal is only as to the legality of the sentence.

POWERS OF APPELLATE COURT

SECTION 386 Of the Code specifies powers of the appellate court. It provides that after perusing the record and after hearing the parties, the court may dismiss the appeal, allow the appeal or pass any other order that may appear to it be just and proper.

It includes appeal –

- Against Acquittal
- Against conviction
- For enhancement of sentence
- From other orders

Clause (d) of section 386 applies to all orders other than that of conviction, or of acquittal, or for enhancement of sentence. The power which the appellate court possess is of alteration or reversal

of the order of the lower court. According to Section 386(e) of the Code, the appellate Court may make any amendment or any consequential or incidental order that may be just or proper.

CONCLUSION & SUGGESTIONS:

An appeal is a creature of statute and the power and jurisdiction of the appellate court must be circumscribed by the words of the statute. At the same time, a court of appeal is a 'court of error' and its normal function is to correct the decision appealed from if necessary, and its jurisdiction should be co-extensive with that of the trial court. It cannot and ought not to do something which the trial court was not competent. The transfer of case from one court to another may not change the nature of the trial or the relief nor does it change the subject position but with the addition of such provisions the legislature and the judiciary imparts a huge impression on the subject about the principle of equity and good conscience. Transfer of cases from one court to another would also ensure that the litigant parties are assured to the justice done to them.

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