

**Speech Delivered**  
**by**  
**Hon`ble Mr.Justice P.Sathasivam, Judge, Supreme Court of India**  
**at**  
**South Zone Regional Judicial Conference**  
**on**  
**Enhancing Timely Justice: Strengthening Criminal Justice Administration**  
**on**  
**CRIMINAL JURISPRUDENCE OF THE SUPREME COURT: KEY HIGHLIGHTS**

## **Introduction**

The Constitution of India gives the Supreme Court the jurisdiction to hear appeals in criminal cases. Article 132 provides for the appellate jurisdiction from the High Courts in certain cases. It states that 'An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of this Constitution'.

Article 134 deals with appellate jurisdiction of the Supreme Court in criminal cases.

Article 134(1) provides that-

'An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) certifies under Article 134A that the case is a fit one for appeal to the Supreme Court.

Provided that an appeal under sub-clause (C) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.'

Order XXI of the Supreme Court Rules, 1966 deals with special leave petitions in criminal proceedings and criminal appeals.

## **Right to Appeal in Criminal Matters?**

The constitutional scheme makes it clear that there is no general right to appeal in criminal matters apart from those as laid down in Article 134(1)(a) and (b). Article 134(c) gives the power to the High Court to certify cases which can be appealed, which must involve a substantial question of law, and not merely application of facts or evidence.

## **Enlargement of Jurisdiction**

Article 134(2) further provides that the 'Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law'.

In pursuance of this power, the **Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970** was promulgated. Section 2 of the Act states:

Without prejudice to the powers conferred on the Supreme Court by clause (1) of article 134 of the Constitution, an appeal lie to the Supreme Court from any judgement, final order of sentence in a criminal proceeding of a High Court in the territory of India if the High Court-

- (a) Has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years;
- (b) Has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years

The scope of this provision has been dealt with in *Kishore Singh v. State of Madhya Pradesh*,<sup>1</sup> where the court held that if a right to appeal would lie under Section 2 of this Act, a certificate by the High Court under Article 134(1)(c) would not be necessary. Thus, the right to appeal under Section 2 is in addition to that under Article 134(1)(c).

Thus, the position is now clear- that in cases which do not come under clause (a) and (b) of Article 134(1) or under the Act of 1970 or Section 379 of the Cr.P.C., and appeal does not lie as of right to the Supreme Court against any order of conviction by the High Court unless a certificate is granted by the High Court under Article 134(1)(c) certifying that the case is fit for appeal or by way of Article 136 by way of a Special Leave Petition in cases where the certificate is refused by the High Court.

The role of the Supreme Court at the time of admission of the appeal is instrumental, and if the High Court has not given this certificate, the case will be dismissed. But as the Court has held in *State of Assam v. Abdul Noor*,<sup>2</sup> the Supreme Court after declining to accept the certificate can allow the appellant to apply under Article 136 in proper cases.

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1 (1977) 4 SCC 524.

2 (1970) 3 SCC 10.

## **Appeals against acquittal and conviction**

In ordinary circumstances, the Apex Court does not interfere with the acquittal or conviction order of the High Court or lower courts. But as has been held in *Satbir v. Surat Singh*,<sup>3</sup> the Supreme Court has the power and duty under Article 142 to do complete justice, and if the Court does not interfere in cases where a clear case of miscarriage of justice is made out, the Court would be failing in its responsibility. But at the same time, the Supreme Court is not supposed to interfere with the orders of High Courts only on mere errors of fact or even law.

Further, the Supreme Court does not usually take cognizance of facts or evidence. Only such examination of the evidence would be ordinarily necessary needed to see that the High Court approached the question properly and applied the principles correctly.<sup>4</sup> But the Court under Article 136 has overriding powers in the interests of justice, and in cases where injustice is manifest, the Court may look into questions of law and fact both.

The Supreme Court, especially in cases of death penalty, exercises wider powers than in other ordinary cases. Thus, the Court can go into the entire record and come to its own conclusions with regard to the appropriateness of the death sentence.

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<sup>3</sup> (1997) 4 SCC 192.

<sup>4</sup> *State of Maharashtra v. Prakash*, 1993 Supp.(1) SCC 653; *State of Madhya Pradesh v. Chhayaram*, 1993 Supp(1) SCC 470.

## **Power of the Court under Articles 134 and 136 compared**

It is clear that whereas the appellate jurisdiction of the Supreme Court under Articles 133(1) and 134(1) can be invoked only against final orders, no such limitation is imposed upon Article 136(1) and may be exercised at the discretion of the Court even against the interlocutory order or decision. The limitation imposed on Article 136 is imposed by the Court itself in its discretion and are not prescribed by the provision.<sup>5</sup> Therefore, the power under Article 136 is unaffected by Article 132, 133 and 134.

## **Power of the Court to look at Evidence**

Normally, the power of the Supreme Court is limited with respect to review of evidence in criminal appeals, unless there is some irregularity or illegality or some serious lapse on the part of the Courts below in marshalling or evaluating evidence and the Supreme Court feels justified in reviewing it is the larger interest of justice. The role of the Supreme Court in cases of criminal appeals is to ensure that the accused gets a fair trial on proper evidence rather than to become an ordinary criminal court and appraise the evidence to ascertain guilt or evidence.

It is for this reason that the Supreme Court does not interfere with acquittal orders recorded by the High Courts unless interests of justice dictate interference. The Court may also interfere in cases where the High Court overlooks important facts and evidence.

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<sup>5</sup> Engineering Mazdoor Sabha v. Hind Cycles Limited, AIR 1963 SC 874.

## **Review of Criminal Proceedings**

Order XL Rule 1 provides limited grounds of review in criminal proceedings as compared to those in civil proceedings. In criminal proceedings the grounds are limited to 'errors apparent on the face of it'. On the other hand the power of review under Article 137 of Constitution is equally wide in all proceedings. In the important case of *Eswara Iyer v. Registrar, Supreme Court of India*<sup>6</sup> the Supreme Court considerably widened the scope of review in criminal proceedings. In a review petition it must be shown that there has been miscarriage of justice.

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<sup>6</sup> (1980) 4 SCC 680.