

**CrPC , 1898), S.439, S.403 - Revision against illegal order of discharge - High Court has the power to interfere with such a patently illegal order of acquittal in the exercise of its revisional jurisdiction under Section 439, and direct a retrial - No bar under S. 403.** Magistrate had no legal power to delete the charges, the order of 'discharge' must be construed as an order of 'acquittal' so that the High Court could not interfere with it in revision and direct a retrial. Assuming arguendo, the Magistrate's order of discharge was an order of 'acquittal' then also, it does not alter the fact that this 'acquittal' was manifestly illegal. It was not passed on merits, but without any trial, with consequent failure of justice. The High Court has undoubtedly the power to interfere with such a patently illegal order of acquittal in the exercise of its revisional jurisdiction under Section 439, and direct a retrial. The High Court's order under appeal, directing the Magistrate to take de novo proceedings against the accused was not barred by the provisions of Section 403, (of the Code of 1898), the earlier proceedings taken by the Magistrate being no trial at all and the order passed therein being neither a valid 'discharge' of the accused, nor their acquittal as contemplated by Section 405 (1). The Magistrate's order (to use the words of Mudholkar J. in Mohd. Safi v. State of West Bengal, AIR 1966 SC 69) was merely "an order putting a stop to these proceedings" since the proceedings, ended with that order.

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