THE CODE OF CRIMINAL PROCEDURE, 1973

Table of contents

CHAPTER XII	INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE
SECTION 154	INFORMATION IN COGNIZABLE CASES
SECTION 155	INFORMATION AS TO NON-COGNIZABLE CASES AND INVESTIGATION OF SUCH CASES
SECTION 156	POLICE OFFICER'S POWER TO INVESTIGATE COGNIZABLE CASES
SECTION 157	PROCEDURE FOR INVESTIGATION
SECTION 158	REPORT HOW SUBMITTED
SECTION 159	POWER TO HOLD INVESTIGATION OR PRELIMINARY INQUIRY
SECTION 160	POLICE OFFICER'S POWER TO REQUIRE ATTENDANCE OF WITNESSES
SECTION 161	EXAMINATION OF WITNESSES BY POLICE
SECTION 162	STATEMENTS TO POLICE NOT TO BE SIGNED : USE OF STATEMENTS IN EVIDENCE
SECTION 163	NO INDUCEMENT TO BE OFFERED
SECTION 164	RECORDING OF CONFESSIONS AND STATEMENTS
SECTION 165	SEARCH BY POLICE OFFICER
SECTION 166	WHEN OFFICER-IN-CHARGE OF POLICE STATION MAY REQUIRE ANOTHER TO ISSUE SEARCH-WARRANT
SECTION 166A	LETTER OF REQUEST TO COMPETENT AUTHORITY FOR INVESTIGATION IN A COUNTRY OR PLACE OUTSIDE INDIA
SECTION 166B	LETTER OF REQUEST FROM A COUNTRY OR PLACE OUTSIDE INDIA TO A COURT OR AN AUTHORITY FOR INVESTIGATION IN INDIA
SECTION 167	PROCEDURE WHEN INVESTIGATION CANNOT BE COMPLETED IN TWENTY-FOUR HOURS
SECTION 168	REPORT OF INVESTIGATION BY SUBORDINATE POLICE OFFICER
SECTION 169	RELEASE OF ACCUSED WHEN EVIDENCE DEFICIENT
SECTION 170	CASES TO BE SENT TO MAGISTRATE WHEN EVIDENCE IS SUFFICIENT
SECTION 171	COMPLAINANT AND WITNESSES NOT TO BE REQUIRED TO ACCOMPANY POLICE OFFICER AND NOT TO BE SUBJECT TO RESTRAINT
SECTION 172	DIARY OF PROCEEDINGS IN INVESTIGATION
SECTION 173	REPORT OF POLICE OFFICER ON COMPLETION OF INVESTIGATION
SECTION 174	POLICE TO ENQUIRE AND REPORT ON SUICIDE, ETC
SECTION 175	POWER TO SUMMON PERSONS
SECTION 176	INQUIRY BY MAGISTRATE INTO CAUSE OF DEATH

The Code of Criminal Procedure, 1973

Introduction

There was no uniform law of criminal procedure for the whole of India For the guidance of the Courts there were separate Acts which were applicable in erstwhile provinces and the presidency towns The Acts which were applicable in the presidency towns were first consolidated by the Criminal Procedure Supreme Court Act (16 of 1852) The Acts which were applicable in the provinces were consolidated by the Criminal Procedure Code (25 of 1861) Criminal Procedure Supreme Courts Act was replaced by the High Court Criminal Procedure Act (12 of 1865) and the Criminal Procedure Code was replaced by Act 10 of 1872 A uniform law of procedure for the whole of India was consolidated by the Code of Criminal Procedure of 1882 (10 of 1882) It was replaced by the Code of Criminal Procedure, 1898 (5 of 1898) This Code of 1898 had been amended by various amending Acts In 1955 extensive amendments were made to simplify procedure and to speed up trials The State Governments too made a large number of amendments to the Code of 1898 To make the criminal procedure more comprehensive the Law Commission was asked to undertake a detailed examination of the Code of Criminal Procedure, 1898 The Commission submitted its report on 19th February, 1968 In the meanwhile Law Commission was reconstituted and the reconstituted commission made a detailed study of the Code of 1898 and submitted its report in September, 1969 Thereafter a draft Bill (41 of 1970) was introduced in the Rajya Sabha on 10th December, 1970 The Bill was referred to a Joint Select Committee of both the Houses of Parliament Incorporating the recommendations of the Joint Select Committee the Code of Criminal Procedure Bill was taken up for consideration by the Parliament

STATEMENT OF OBJECTS AND REASONS

The law relating to criminal procedure applicable to all criminal proceedings in India (except those in the States of Jammu and Kashmir and Nagaland the Tribal Areas in Assam) is contained in the Code of Criminal Procedure, 1898 The Code has been amended from time to time by various Acts of the Central and State Legislatures The more important of these were the amendments brought about by Central legislation in 1923 and 1955 The amendments of 1955 were extensive and were intended to simplify procedures and speed up trials as far as possible In addition, local amendments were made by State Legislatures of which the most important were those made to bring about separation of the Judiciary from the Executive Apart from these amendments, the provisions of the Code of 1898 have remained practically unchanged through these decades and no attempt was made to have a comprehensive revision of this old Code till the Central Law Commission was set up in 1955

2 The first Law Commission presented its Report (the Fourteenth Report) on the Reform of Judicial Administration, both civil and criminal in 1958; it was not concerned with detailed scrutiny of the provisions of the Code of Criminal Procedure, but it did make some recommendations in regard to the law of criminal procedure, some of which required amendments to the Code A systematic examination of the Code was subsequently undertaken by the Law Commission not only for giving concrete form to the recommendations made in the Fourteenth Report but also with the object of attempting a general revision The main task of the

Commission was to suggest measures to remove anomalies and ambiguities brought to light by conflicting decisions of the High Courts or otherwise to consider local variations with a view to securing and maintaining uniformity, to consolidate laws wherever possible and to suggest improvements where necessary Suggestions for improvements received from various sources were considered by the Commission A comprehensive report for the revision of the Code, namely, the Forty-first Report, was presented by the Law Commission in September 1969 This report took into consideration the recommendations made in the earlier reports of the Commission dealing with specific matters, namely, the Fourteenth Twenty-fifth Thirty-second, Thirty-third, Thirty-sixth, Thirty-seventh and Fortieth Reports

3 The recommendations of the Commission were examined carefully by the Government, keeping in view among others, the following basic considerations:—

(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community

The occasion has been availed of to consider and adopt where appropriate suggestions received from other quarters, based on practical experience of investigation and the working of criminal Courts

4 One of the main recommendations of the Commission is to provide for the separation of the Judiciary from the Executive on an all India basis in order to achieve uniformity in this matter To secure this, the Bill seeks to provide for a new set up of criminal Courts In addition to ensuring fair deal to the accused, separation as provided for in the Bill would ensure improvement in the quality and speed of disposal as all Judicial Magistrates would be legally qualified and trained persons working under close supervision of the High Court

5 Some of the more important changes proposed to be made with a view to speeding up the disposal of criminal cases are—

(a) the preliminary inquiry which precedes the trial by a Court of Session, otherwise known as committal proceedings, is being abolished as it does not serve any useful purpose and has been the cause of considerable delay in the trial of offences;

(b) provision is being made to enable adoption of the summons procedure for the trial of offences punishable with imprisonment up to two years instead of up to one year as at present; this would enable a larger number of cases being disposed of expeditiously;

(c) the scope of summary trials is being widened by including offences punishable with imprisonment up to one year instead of six months as at present; summons procedure will be adopted for all summary trials;

(d) the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay of disposal of criminal cases;

(e) the provision for compulsory stoppage of proceedings by a subordinate Court on the mere intimation from a party of his intention to move a higher Court for transfer of the case is being omitted and a further provision is being made to the effect that the Court hearing the transfer application shall not stay proceedings unless it is necessary to do so in the interest of justice;

(f) when adjournments are granted at the instance of either party, the Court is being empowered to order costs to be paid by the party obtaining the adjournments to the other party;

(g) provision is being made for the service of summons by registered post in certain cases;

(h) in petty cases, the accused is being enabled to plead guilty by post and to remit the fine specified in the summons;

(i) if a Court of appeal or revision discovers that any error, omission or irregularity in respect of a charge has occasioned failure of justice it need not necessarily order retrial;

(j) the facility of part-heard cases being continued by successors-in-office now available in respect of Courts of Magistrates is being extended to Courts of Session

In addition to the above specific measures, the Commission's recommendations which are intended to resolve conflicts of decisions on various matters or to remove ambiguities have been given effect to and these provisions may, by themselves, help in reducing the time taken in litigation

6 Some of the more important changes intended to provide relief to the proper sections of the community are—

(a) provisions have been made for giving legal aid to an indigent accused in cases triable by a Court of Session; the State Government may extend this facility to other categories of cases;

(b) the Court has been empowered to order payment of compensation by the accused to the victims of crimes, to a larger extent than is now permissible under the Code;

(c) when a Commission is issued for the examination of a witness for the prosecution, the cost incurred by the defence including pleader's fees may be ordered to be paid by the prosecution;

(d) the accused will be given an opportunity to make representation against the punishment before it is imposed

In addition to these specific provisions, the steps taken to reduce delays would themselves automatically benefit the poorer sections, as it is they who particularly suffer by the prolongation of criminal cases

7 The notes on clauses explain the more important provisions of the Bill

Act 2 of 1974

The Code of Criminal Procedure Bill having been passed by both the Houses of Parliament received the assent of the President on 25th January, 1974 It came into force on the 1st day of April, 1974 as THE CODE OF CRIMINAL PROCEDURE, 1973 (2 of 1974)

List of Amending Acts

1. The Repealing and Amending Act, 1974 (56 of 1974)

2. The Code of Criminal Procedure (Amendment) Act, 1978 (45 of 1978)

3. The Code of Criminal Procedure (Amendment) Act, 1980 (63 of 1980)

4. The Criminal Law (Amendment) Act, 1983 (43 of 1983)

5. The Criminal Law (Second Amendment) Act, 1983 (46 of 1983)

6. The Code of Criminal Procedure (Amendment) Act, 1988 (32 of 1988)

7. The Code of Criminal Procedure (Amendment) Act, 1990 (10 of 1990)

8. The Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991)

9. The Code of Criminal Procedure (Amendment) Act, 1993 (40 of 1993)

10. The Criminal Law (Amendment) Act, 1993 (42 of 1993)

THE CODE OF CRIMINAL PROCEDURE, 1973

(2 of 1974)

[25th January, 1974

An Act to consolidate and amend the law relating to Criminal Procedure
Be it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:—

CHAPTER I - PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Code of Criminal Procedure, 1973

(2) It extends to the whole of India except the State of Jammu and Kashmir:
Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply—

(a) to the State of Nagaland,

(b) to the tribal areas, but the concerned State Government may, by notification apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification

Explanation—In this section, "**tribal areas**" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong

(3) It shall come into force on the Ist day of April, 1974

2. Definitions

In this Code, unless the context otherwise requires, —

(a) "**bailable offence**" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "**non-bailable offence**" means any other offence;

(b) "**charge**" includes any head of charge when the charge contains more heads than one:

(c) "**cognizable offence**" means an offence for which, and "**cognizable case**" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

(d) "**complaint**" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report

Explanation— A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

(e) "**High Court**" means,—

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;

(iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India;

(f) "**India**" means the territories to which this Code extends;

(g) "**inquiry**" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

(h) "**investigation**" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

(i) "**judicial proceeding**" includes any proceeding in the course of which evidence is or may be legally taken on oath;

(j) "**local jurisdiction**", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify;

(k) "**metropolitan area**" means the area declared, or deemed to be declared, under section 8, to be a metropolitan area;

(l) "**non-cognizable offence**" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;

(m) "**notification**" means a notification published in the Official Gazette;

(n) "**offence**" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871);

(o) "**officer in charge of a police station**" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when, the State Government so directs, any other police officer so present;

(p) "**place**" includes a house, building, tent, vehicle and vessel;

(q) "**pleader**", when used with reference to any proceeding in any Court, means a person authorised by or under any law for the time being in force, to practice in such Court, and includes any other appointed with the permission of the Court to act in such proceeding;

(r) "**police report**" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

(s) "**police station**" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;

(t) "**prescribed**" means prescribed by rules made under this Code;

(u) "**Public Prosecutor**" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;

(v) "**sub-division**" means a sub-division of a district;

(w) "**summons-case**" means a case relating to an offence, and not being a warrant-case;

(x) "**warrant-case**" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(y) words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code

Comments

(i) A Deputy Government Advocate of Rajasthan being a Public Prosecutor is competent to present an appeal to High Court from order of acquittal; *State of Rajasthan* v *Smt Mabhar Sheo Karan and Kalyan,* (1981) SC Cr R 301;

(ii) The expression "**Judicial proceeding**" defined in clause (i) of section 2 includes any proceeding in the course of which evidence is or may be legally taken on oath The law does not prescribe any particular method of presentation of challan, namely, that it should be presented by any police official When the challan was presented before the Court, who was acting as a Judicial Magistrate at that time, the first step in the judicial proceeding was sitting in judicial proceeding; *Shrichand* v *State of Madhya Pradesh*, (1993) Cr LJ 495

3. Construction of references

(1) In this Code,—
(a) any reference, without any qualifying words, to a Magistrate shall be construed, unless the context otherwise requires,—

(i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate;

(ii) in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;

(b) any reference to a Magistrate of the second class shall, in relation to an area outside a metropolitan area, be construed as a reference to a Judicial Magistrate of the second class, and, in relation to a Metropolitan area, as a reference to a Metropolitan Magistrate;

(c) any reference to a Magistrate of the first class shall,—

(i) in relation to a Metropolitan area, be construed as a reference to a Metropolitan Magistrate exercising jurisdiction in that area;

(ii) in relation to any other area, be construed as a reference to a Judicial Magistrate of the first class exercising jurisdiction in that area;

(d) any reference to the Chief Judicial Magistrate shall, in relation to a Metropolitan area, be construed as a reference to the Chief Metropolitan Magistrate exercising jurisdiction in that area

(2) In this Code, unless the context otherwise requires, any reference to the Court of a Judicial Magistrate shall, in relation to a Metropolitan area, be construed as a reference to the Court of the Metropolitan Magistrate for that area

(3) Unless the context otherwise requires, any reference in any enactment passed before the commencement of this Code,—

(a) to a Magistrate of the first class, shall be construed as a reference to a Judicial Magistrate of the first class;

(b) to a Magistrate of the second class or of the third class, shall be construed as a reference to a Judicial Magistrate of the second class;

(c) to a Presidency Magistrate or Chief Presidency Magistrate, shall be construed as a reference, respectively, to a Metropolitan magistrate or the Chief Metropolitan Magistrate;

(d) to any area which is included in a metropolitan area, as a reference to such metropolitan area, and any reference to a Magistrate of the first class or of the second class in relation to such area, shall be construed as a reference to the Metropolitan Magistrate exercising jurisdiction in such area

(4) Where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters—

(a) which involve the appreciation or shifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate **STATE**

AMENDMENTS

Andaman and Nicobar Islands (UT)

(1) After section 3, the following section shall be inserted, namely: —

"3-*A Special provision relating to Andaman and Nicobar Islands*—(I) Reference in this Code to:

> (a) The Chief Judicial Magistrate shall be construed as references to the District Magistrate or, where the State Government so directs, also to the Additional District Magistrate;
>
> (b) a Magistrate or Magistrate of the first class or of the second class or Judicial Magistrate of the first class or of the second class, shall be construed as references to such Executive Magistrate as the State Government may, be notification in the Official Gazette, specify

(2) The State Government may, if it is of opinion that adequate number of persons are available for appointment as Judicial Magistrate, by notification in the Official Gazette, declare that the provisions of this section shall, on and from such day as may be specified in the notification, cease to be in force and different dates may be specified for different islands

(3) On the cesser of operation of the provisions of this section every inquiry or trial pending, immediately before such cesser, before the District Magistrate or Additional District Magistrate or any Executive Magistrate, as the case may be, shall stand transferred, and shall be dealt with, from the stage which was reached before, such cesser, by such Judicial Magistrate as the State Government may specify in this behalf"

[Regulation 1 of 1974, sec 3 (wef 30-3-1974)

Arunachal Pradesh and Mizoram:

After sub-section (4), the following sub-section shall be inserted, namely:—

"(5) Notwithstanding anything contained in the foregoing provisions of this section,—
(i) any reference in such of the provisions of this Code, as applied to the Union territories of Arunachal Pradesh and Mizoram, to the Courts mentioned in Column (1) of the Table below shall, until the Courts of Session and Courts of Judicial Magistrate are constituted in the said Union territories be construed as references to the Court of Magistrate mentioned in the corresponding entry in Column (2) of that Table

Table

1	2
Court of Session or Sessions Judge or Chief District Magistrate	Judicial Magistrate
Magistrate or Magistrate of the First Class or Executive Magistrate	
Judicial Magistrate of the First Class	

(ii) the functions mentioned in clause (a) of sub-section (4) shall be exercisable by an Executive Magistrate"

The Chief Commissioners and the Additional Deputy Commissioners, in the Union territory of Arunachal Pradesh, were appointed to be Executive Magistrate

4. Trial of offences under the Indian Penal Code and other laws

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences

5. Saving

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force

Chapter II - CONSTITUTION OF CRIMINAL COURTS AND OFFICES

6. Classes of Criminal Courts—Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely: —

(i) Courts of Session;

(ii) Judicial Magistrate of the first class and, in any Metropolitan area, Metropolitan Magistrate;

(iii) Judicial Magistrate of the second class; and

(iv) Executive Magistrate

7. Territorial divisions

(1) Every State shall be a sessions division or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts:—

Provided that every metropolitan area shall, for the said purposes, be a separate sessions division and district

(2) The State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts

(3) The State Government may, after consultation with the High Court, divide any district into sub-divisions and may alter the limits or the number of such sub-divisions

(4) The sessions divisions, districts and sub-divisions existing in a State at the commencement of this Code, shall be deemed to have been formed under this section

8. Metropolitan areas

(1) The State Government may, by notification, declare that, as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall be a metropolitan area for the purposes of this Code

(2) As from the commencement of this Code, each of the Presidency-towns of Bombay, Calcutta and Madras and the city of Ahmedabad shall be deemed to be declared under sub-section (1) to be a metropolitan area

(3) The State Government may, by notification, extend, reduce or alter the limits of a metropolitan area but the reduction or alteration shall not be so made as to reduce the population of such area to less than one million

(4) Where, after an area has been declared, or deemed to have been declared to be, a metropolitan area, the population of such area falls below one million, such area shall, on and from such date as the State Government may, by notification, specify in this behalf, cease to be a metropolitan area; but notwithstanding such cesser, any inquiry, trial or appeal pending immediately before such cesser before any Court or Magistrate in such area shall continue to be dealt with under this Code, as if such cesser had not taken place

(5) Where the State Government reduces or alters, under sub-section (3), the limits of any metropolitan area, such reduction or alteration shall not affect any inquiry, trial or appeal pending immediately before such reduction or alteration before any Court or Magistrate, and every such inquiry, trial or appeal shall continue to be dealt with under this Code as if such reduction or alteration had not taken place

Explanation—In this section, the expression "**population**" means the population as ascertained at the last preceding census of which the relevant figures have been published

9. Court of Session

(1) The State Government shall establish a Court of Session for every sessions division

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court

(3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application

(6) The Court of Sessions shall ordinarily hold its sitting at such place or places an the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein

Explanation — For the purposes of this Code, "**appointment**" does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by Government

STATE AMENDMENTS

Uttar Pradesh:

In section 9 after sub-section (5), the following sub-section shall be inserted, namely:—

"(5-A) In the event of the death, resignation, removal or transfer of the Sessions Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from his place at which his Court is held, the senior most among the Additional Sessions Judges, and the Assistant Sessions Judges present at the place, and in their absence the Chief Judicial Magistrate shall without relinquishing his ordinary duties assume charge of the office of the Sessions Judge and continue in charge there of until the office is resumed by the sessions judge or assumed by an officer appointed thereto, and shall subject to the provision of this Code and any rules made by the High Court in this behalf, exercise any of the powers of the Sessions Judge"
[*Vide* UP Act 1 of 1984, sec 2 (wef 1-5-1984)

In section 9, in sub-section (6), insert the following proviso:—

"Provided that the Court of Sessions may hold, or the High Court may direct the Court of Session to hold its sitting in any particular case at any place in the Sessions Division, where it appears expedient to do so for considerations of internal security or public order, and in such cases, the consent of the prosecution and the accused shall not be necessary"
Vide UP Act 16 of 1976, sec 2

West Bengal:

To sub-section (3) of section 9 the following provisos shall be added:—

"Provided that notwithstanding anything to the contrary contained in this Code, Additional Sessions Judge in a sub-division, other than the sub-division, by whatever name called, wherein the headquarters of the Sessions Judges are situated, exercising jurisdiction in a Court of Session, shall have all the powers of the Sessions Judge under this Code, in respect of the cases and proceedings in the Criminal Courts in that sub-division, for the purposes of sub-section (7) of session 116 sections 193 and, clause (a) of section 209 and sections 409, 439 and 449:

Provided further that the above powers shall not be in derogation of the powers otherwise exercisable by an Additional Sessions Judge or a Sessions Judge under this Code"
Vide WB Act 24 of 1988, sec 3

10. Subordination of Assistant Sessions Judges

(1) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction

(2) The Sessions Judges may, from time to time, make rules consistent with this Code, as to the distribution of business among such Assistant Sessions Judges

(3) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application

11. Courts of Judicial Magistrates

(1) In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify:

Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrate of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established

(2) The presiding officers of such Courts shall be appointed by the High Courts

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court

STATE AMENDMENTS

Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep:

In sub-section (3) of section 11, for the words "any member of the Judicial Service of the State functioning as a Judge in a Civil Court" the words "any person discharging the functions of a Civil Court", shall be substituted
[*Vide* Regulation 1 of 1974 (wef 30-3-1974)

Bihar:

After sub-section (3) of Section 11, the following sub-section shall be inserted, namely:—
"(4) The State Government may likewise establish for any local area one or more Courts of Judicial Magistrate of the first class or second class to try any particular cases of particular class or categories of cases"
[*Vide* Bihar Act 8 of 1977, sec 2 (wef 10-1-1977)

Haryana:

After sub-section (1) of Section 11, the following sub-section shall be inserted:—
"(1-A) The State Government may likewise establish as many Courts of Judicial Magistrate of the first class and of the second class in respect to particular cases or particular class or classes of cases, or to cases generally in any local area"
[*Vide* Haryana Act 16 of 1976, sec 2 (wef 24-2-1976)

Kerala:

(1) In section 11, after sub-section (1), the following sub-section shall be inserted, namely:—
"(1-A) The State Government may likewise establish as many special Courts of Judicial Magistrate of First Class in respect to particular cases or to a particular class or particular classes of cases or in regard to cases generally, in any local area

(2) The amendments made by sub-section (1) shall be, and shall be deemed to have been, in force for the period commencing from the 2nd day of December, 1974 and ending with the 18th day of December, 1978

Validation—Any notification issued by the State Government on or after the 2nd day of December, 1974 and before the commencement of the Code of Criminal Procedure (Amendment) Act, 1978 (Central Act 45 of 1978) purporting to establish any special Court of the Judicial Magistrate of the first class having jurisdiction over more than one district shall be deemed to have been issued under section 11 of the said code as amended by this Act and accordingly such notification issued and any act or proceeding done or taken or purporting to have been done or taken by virtue of it shall be deemed to be and always to have been valid"
[*Vide* Kerala Act 21 of 1987

Punjab:

In sub-section (1) of section 11, insert the following new sub-section:—

"(1-A) The State Government may likewise establish as many Courts of Judicial Magistrate of the first class in respect to particular cases or to particular classes of cases, or in regard to cases generally, in any local area"
[*Vide* Punjab Act 9 of 1978, sec 2 (wef 14-4-1978)

Rajasthan:

In sub-section (1) of section 11, the following new sub-section shall be inserted, namely:—
"(1-A) The State Government may likewise establish as many Courts of Judicial Magistrate of the first class and of the second class in respect to particular cases, or to a particular class or particular classes of cases, or in regard to cases generally, in any local area"
[*Vide* Rajasthan Act 10 of 1977, sec 2 (wef 13-9-1977)

Uttar Pradesh:

In section 11, the following sub-section shall be inserted, namely:—
"(1A) The State Government may likewise establish as many Courts of Judicial Magistrate of the first class and of the second class in respect to particular cases, or to a particular class or particular classes of cases, or in regard to cases generally, in any local area"
[*Vide* UP Act 16 of 1976, sec 3 (wef 30-4-1976)

12. Chief Judicial Magistrate and Additional Chief Judicial Magistrate, *etc*

(1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to the Chief Judicial Magistrate

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct

(3) (a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf .

STATE AMENDMENTS

Nagaland:

In sub-sections (1), (2) and (3) the words "High Court" shall be substituted by the words "State Government" wherever they occur

[*Vide* Notification Law 170/74 Leg, dated 3-7-1975

Uttar Pradesh:

After sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Where the office of the Chief Judicial Magistrate is vacant or he is incapacitated by illness, absence or otherwise for the performance of his duties, the senior-most among the Additional Chief Judicial Magistrate and other judicial Magistrates present at the place, and in their absence the district magistrate and in his absence the senior-most Executive Magistrate shall dispose of the urgent work of the Chief Judicial Magistrate"

[*Vide* UP Act 1 of 1984, sec 3 (wef 1-5-1984)

13. Special Judicial Magistrates

(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct
(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction

STATE AMENDMENTS

Andhra Pradesh:

In sub-section (2) of section 13, for the words "not exceeding one year at a time" the words "not exceeding two years at a time" shall be substituted and to the said sub-section the following proviso shall be added, namely:—

"Provided that any person who is holding the office of Special Judicial Magistrate at the commencement of the Code of Criminal Procedure (Andhra Pradesh Amendment) Act, 1992 and has not completed sixty-five years of age shall continue to hold office for a term of two years from the date of his appointment"
[*Vide* AP Act 2 of 1992

Bihar:
In section 13 for the words "in any district", the words "in any local area" shall be substituted
[*Vide* Bihar Act 8 of 1977, sec (wef 10-1-1977)

Haryana:

In section 13 of the principal Act, in sub-section (1) for the words "second class", the words "first class or second class" and for the words "in any district", the words "in any local area" shall be substituted
[*Vide* Haryana Act 16 of 1976, sec 3 (wef 24-2-1976)

Himachal Pradesh:

In section 13, for the words "in any district" the words "in any local area" shall be substituted
[*Vide* Act 40 of 1976 (wef 13-11-1976)

Punjab and Uttar Pradesh:

In section 13 of the principal Act, in sub-section (1) for the words "second class" the words "first class or second class" and for the words "in any district", the words "in any local area" shall be substituted
[*Vide* Punjab Act 9 of 1978, sec 3 (wef 14-4-1978) and UP Act 16 of 1976, sec 4 (wef 5-1-1976)

14. Local Jurisdiction of Judicial Magistrates

(1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code:

Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district

(3) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area **STATE AMENDMENT Maharashtra:**

After section 14, the following section shall be inserted, namely:—

15. Subordination of Judicial Magistrates

(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him **STATE AMENDMENT**

Bihar:

After sub-section (2) of section 15, the following sub-section shall be substituted, namely:—

"(3) Any judicial Magistrate exercising powers over any local area extending beyond the district in which he holds his Court, shall be subordinate to the Chief Judicial Magistrate of the said district and reference in this Code to the Sessions Judge shall be deemed to be references to the Sessions Judge of that district where he holds his Court"
[*Vide* Bihar Act 8 of 1977, sec 4 (wef 10-1-1977)

16. Courts of Metropolitan Magistrates

(1) In every metropolitan area, there shall be established as many Courts of Metropolitan Magistrates, and at such places, as the State Government may, after consultation with the High Court, by notification, specify

(2) The presiding officers of such Courts shall be appointed by the High Court

(3) The jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area **STATE AMENDMENT**

Uttar Pradesh:
In section 16 after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Where the office of the Chief Metropolitan Magistrate is vacant or he is incapacitated by illness, absence or otherwise for the performance of his duties, the senior most among the Additional Chief Metropolitan Magistrates and other Metropolitan Magistrates present at the place, shall dispose of the urgent work of the Chief Metropolitan Magistrate"
[*Vide* UP Act 1 of 1984, sec 3 (wef 1-5-1984)

17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate

(1) The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area

(2) The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct

18. Special Metropolitan Magistrates

(1) The High Court may, if requested by any Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan Magistrate, in respect to particular cases or to particular classes of cases *** in any metropolitan area within its local jurisdiction:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify

(2) Such Magistrates shall be called Special Metropolitan Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct

(3) The High Court or the State Government, as the case may be, may empower any Special Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judicial Magistrate of the first class

STATE AMENDMENTS

Andhra Pradesh:

In sub-section (2) of section 18, for the words, "not exceeding one year at a time" the words "not exceeding two years at a time" shall be substituted and to the said sub-section the following proviso shall be added, namely:—

"Provided that a person who is holding the office of Special Metropolitan Magistrate at the commencement of the Code of Criminal Procedure (Andhra Pradesh Amendment) Act, 1992, and has not completed sixty-five years of age shall continue to hold office for a term of two years from the date of his appointment"
[*Vide* AP Act 2 of 1992 (Date of enforcement yet to be notified)

Maharashtra:

In sub-section (1) of section 18, for the words "in any metropolitan area" the words "in one or more metropolitan areas" shall be substituted
[*Vide* Maharashtra Act 23 of 1976, sec 3 (wef 10-6-1976)

19. Subordination of Metropolitan Magistrates

(1) The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge, and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate

(2) The High Court may, for the purposes of this Code, define the extent of the subordination if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate

(3) The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate

20. Executive Magistrates

(1) In every district and in every metropolitan area The State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have such of the powers of a District Magistrate under this Code or under any other law for the time being in force as may be directed by the State Government

(3) Whenever, in consequence of the office of a District Magistrate becoming Vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate

(4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate

(5) Nothing in this section shall preclude the State Government from conferring Under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area

STATE AMENDMENT

Uttar Pradesh:

In section 20 after sub-section (5), the following sub-section shall be inserted, namely:—
"(6) The State Government may delegate its powers under sub-section (4) to the District Magistrate"
Vide UP Act 1 of 1984, sec 5 (wef 1-5-1984)

21. Special Executive Magistrates

The State Government may appoint, for such term as it may think fit, Executive Magistrates, to be known as Special Executive Magistrates for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrate, as it may deem fit

Comments

Special Executive Magistrate is entitled to exercise any of powers of the Executive Magistrate conferred by the Code, *State of Maharashtra* v *Mohammad Salim Khan,* (1991)1 Crimes 120 (SC)

22. Local Jurisdiction of Executive Magistrates

(1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Code

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district

23. Subordination of Executive Magistrates

(1) All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate

24. Public Prosecutors

(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutor, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:
Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutor or Additional Public Prosecutors for the district

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4)

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:
Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4)

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate

STATE AMENDMENTS

Bihar:

In section 24, for sub-section (6) the following sub-section shall be substituted:—

"(6) Notwithstanding anything contained in sub-section (5) where in a State there exists a regular Cadre of Prosecuting Officers, the State Government may also appoint a Public Prosecutor or an Additional Public Prosecutor from among the persons constituting such Cadre"
[*Vide* Bihar Act 16 of 1984 sec 2 (wef 24-8-1984)

Haryana:

To sub-section (6) of section 24, the following *Explanation* shall be added, namely:—

"**Explanation—**For the purpose of sub-section (6), the persons constituting the Haryana State Prosecution Legal Service (Group A) or Haryana State Prosecution Legal Service (Group B), shall be deemed to be a regular Cadre of Prosecuting Officers"
[*Vide* Haryana Act 14 of 1985, sec 2

Karnataka:

In section 24 of the Principle Act, in sub-section (1),—
(i) the words "or the State Government shall", shall be omitted; and
(ii) for the words "appoint a Public Prosecutor" the words "or the State Government shall appoint a Public Prosecutor" shall be substituted
[*Vide* Karnataka Act 20 of 1982, sec 2 (wef 3-9-1981)

Madhya Pradesh:
In section 24,—

(i) in sub-section (6), for the words, `brackets and figure "Notwithstanding anything contained in sub-section (5)", the words, brackets, letter and figures "Notwithstanding anything contained in sub-section (5), but subject to the provisions of sub-section (6-A)" shall be substituted and shall be deemed to have been substituted with effect from 18th December, 1978;

(ii) after sub-section (6), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from 18th December, 1978, namely:—

"(6-A) Notwithstanding anything contained in sub-section (6), the State Government may appoint a person who has been in practice as an advocate for not less than seven years as the Public Prosecutor or Additional Public Prosecutor for the district and it shall not be necessary to appoint the Public Prosecutor or Additional Public Prosecutor for the district from among the person constituting the Cadre of Prosecuting Officers in the State of Madhya Pradesh and the provisions of sub-sections (4) and (5) shall apply to the appointment of a Public Prosecutor Additional Public Prosecutor under this sub-section";

(iii) in sub-section (7), after the words, bracket and figure "sub-section (6)", the words, brackets, figure and letter "or sub-section (6-A)" shall be inserted and shall be deemed to have been inserted with effect from 18th December, 1978; and

(iv) in sub-section (9), for the words, brackets and figure, "sub-section (7)", the words, brackets, figures and letter "sub-section (6-A) and sub-section (7)" shall be substituted and shall be deemed to have been substituted with effect from 18th December, 1978
(*Vide* MP Act 21 of 1995, sec 3 (wef 24-5-1995)

Maharashtra:

In section 24,—

(a) in sub-section (1), the words "after consultation with the High Court" shall be deleted;

(b) in sub-section (4), for the words "in consultation with the Sessions Judge" the words "with the approval of the State Government", shall be substituted
[*Vide* Maharashtra Act 34 of 1981 sec 2 (wef 20-5-1981)

Rajasthan:

In section 24, sub-section (6) shall be substituted by the following, namely:—
"(6) Notwithstanding anything contained in sub-section (5), wherein a State there exists a regular Cadre of Prosecuting Officers, the State Government may also appoint a Public Prosecutor or an Additional Public Prosecutor from among the persons constituting such Cadre"
[*Vide* Rajasthan Act 1 of 1981, sec 2 (wef 10-12-1980)

Tamil Nadu:

In section 24,—

(a) in sub-section (6), after the expression "sub-section (5)" insert the following, namely:—
"but subject to the provisions of sub-section (6-A)";

(b) after sub-section (6), insert the following sub-section namely:—

"(6-A) Notwithstanding anything contained in sub-section (6), the State Government may appoint a person who has been in practice as an advocate for not less than seven years, as the Public Prosecutor or Additional Public Prosecutor for the district and it shall not be necessary to appoint the Public Prosecutor or Additional Public Prosecutor for the district from among the persons constituting the Cadre of Prosecuting Officers in the State of Tamil Nadu and the provisions of sub-sections (4) and (5) shall apply to the appointment of a Public Prosecutor or Additional Public Prosecutor under this sub-section"

(c) "In sub-section (7), after the expression "sub-section (6)" insert "or sub-section (6A)"
[*Vide* TN Act 42 of 1980 sec 2 (wef 1-12-1980)

Uttar Pradesh:
In section 24,—

(a) in sub-section (1), after the words "Public Prosecutor" the words, "and one or more Additional Public Prosecutors" shall be inserted and be deemed always to have been inserted

(b) after sub-section (6), the following sub-section shall be inserted and be deemed always to have been inserted, namely:—

"(7) For the purpose of sub-sections (5) and (6), the period during which a person has been in practice as a pleader, or has rendered service as a Public Prosecutor, Additional Public Prosecutor or Assistant Public Prosecutor, shall be deemed to be the period during which such person has been in practice as an advocate
[*Vide* UP Act 33 of 1978, sec 2 (wef 9-10-1978)
In section 24 hereinafter referred to as the said Code—

(a) in sub-section (1), the words "after consultation with the High Courts" shall be omitted;

(b) sub-sections (4), (5) and (6) shall be omitted;

(c) in sub-section (7), the words" or sub-section (6)" shall be omitted
[*Vide* UP Act 18 of 1991, sec 2 (wef 16-2-1991)

West Bengal:

In sub-section (6) of section 24, for the words "shall appoint a Public Prosecutor or an Additional Public Prosecutor only" the words " may also appoint a Public Prosecutor or an Additional Public Prosecutor" shall be substituted
[*Vide* WB Act 26 of 1990

In sub-section (6) of section 24, the proviso shall be omitted
[*Vide* WB Act 25 of 1992

Comments

Challenging the appointment of public prosecutor on the ground that was made in consultation with collector and Session Judge and not with Metropolitan Magistrate is not held to be illegal; *Surapaneni Ram Prasad* v *Govt of Andhra Pradesh*, 2000 Cr LJ 354 (AP) shall be inserted and be deemed always to have been inserted

(b) after sub-section (6), the following sub-section shall be inserted and be deemed always to have been inserted, namely:—
"(7) For the purpose of sub-sections (5) and (6), the period during which a person has been in practice as a pleader, or has rendered service as a Public Prosecutor, Additional Public Prosecutor or Assistant Public Prosecutor, shall be deemed to be the period during which such person has been in practice as an advocate

[*Vide* UP Act 33 of 1978, sec 2 (wef 9-10-1978)
In section 24 hereinafter referred to as the said Code—

(a) in sub-section (1), the words "after consultation with the High Courts" shall be omitted;

(b) sub-sections (4), (5) and (6) shall be omitted;

(c) in sub-section (7), the words" or sub-section (6)" shall be omitted
[*Vide* UP Act 18 of 1991, sec 2 (wef 16-2-1991)

West Bengal:

In sub-section (6) of section 24, for the words "shall appoint a Public Prosecutor or an Additional Public Prosecutor only" the words " may also appoint a Public Prosecutor or an Additional Public Prosecutor" shall be substituted
Vide WB Act 26 of 1990
In sub-section (6) of section 24, the proviso shall be omitted
Vide WB Act 25 of 1992

Comments

Challenging the appointment of public prosecutor on the ground that was made in consultation with collector and Session Judge and not with Metropolitan Magistrate is not held to be illegal; *Surapaneni Ram Prasad* v *Govt of Andhra Pradesh*, 2000 Cr LJ 354 (AP)

25. Assistant Public Prosecutors

(1) The State Government shall appoint in every district one or more Assistant public Prosecutors for conducting prosecutions in the Courts of Magistrates

(1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed—

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector

STATE AMENDMENTS

Orissa:

In sub-section (2) of section 25, the following proviso shall be inserted, namely:—

"Provided that nothing in this sub-section shall be construed to prohibit the State Government from exercising its Control over Assistant Public Prosecutor through police officers"
Vide Orissa Act 6 of 1995 (wef 10-3-1995)

Uttar Pradesh:

In sub-section (2) of section 25, the following proviso shall be inserted and be deemed always to have been inserted, namely:—

"Provided that nothing in this sub-section shall be construed to prohibit the State Government from exercising its control over Assistant Public Prosecutor through police officers"
Vide UP Act 16 of 1976, sec 5 (wef 30-4-1976)

West Bengal:

For sub-section (3) of section 25, the following sub-section shall be substituted, namely:—

"(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, any advocate may be appointed to be the Assistant Public Prosecutor in charge of that case—

(a) where the case is before the Court of Judicial Magistrate in any area in a sub-division, wherein the headquarters of the District Magistrate are situated, by the District Magistrate; or

(b) where the case is before the Court of a Judicial Magistrate in any area in a sub-division, other than the sub-division referred to in clause (a), wherein the headquarters of the Sub-divisional Magistrate are situated, by the Sub-divisional Magistrate; or

(c) where the case is before the Court of a Judicial Magistrate in any area, other than the area referred to in clauses (a) and (b), by a local officer (other than a police officer) specially authorised by the District Magistrate in this behalf

Explanation—For the purposes of this sub-section,—

(i) "advocate" shall have the same meaning as in the Advocates Act, 1961 (5 of 1961);

(ii) "local officer" shall mean an officer of the State Government in any area, other than the area referred to in clauses (a) and (b)
Vide W B Act 17 of 1985, sec 3

CHAPTER III - POWER OF COURTS

26. Courts by which offences are triable

Subject to the other provisions of this Code,—

(a) any offence under the Indian Penal Code (45 of 1860) may be tried by—

(i) the High Court, or

(ii) the Court of Session, or

(iii) any other Court by which such offence is shown in the First Schedule to be triable;

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by—

(i) the High Court, or

(ii) any other Court by which such offence is shown in the First Schedule to be triable

STATE AMENDMENT

Uttar Pradesh:

In section 26 for clause (b), the following clause shall be substituted, namely:—
"(b) any offence under any other law may be tried—

(i) when any Court is mentioned in this behalf in such law, by such Court, or by any Court superior in rank to such Court, and

(ii) when no Court is so mentioned, by any Court by which such offence is shown in the Fist Schedule to be triable, or by any Court superior in rank to such Court"
Vide UP Act 1 of 1984, sec 6 (wef 1-5-1984)

27. Jurisdiction in the case of juveniles

Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders

28. Sentences which High Courts and Sessions Judges may pass

(1) A High Court may pass any sentence authorised by law

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court

(3) An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years

29. Sentences which Magistrates may pass

(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or both

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class

State Amendment

Punjab:
After section 29, the following section shall be inserted, namely:—

30. Sentence of imprisonment in default of fine

(1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law:

Provided that the term—

(a) is not in excess of the powers of the Magistrate under section 29;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 29

31. Sentence in cases of conviction of several offences at one trial

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments, prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence

32. Mode of conferring powers

(1) In conferring powers under this Code, the High Courts or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered

33. Powers of officers appointed

Whenever any person holding an office in the service of Government who has been invested by the High Court or the State Government with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same State Government, he shall, unless the High Court or the State Government, as the case may be, otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed

34. Withdrawal of powers

(1) The High Court or the State Government, as the case may be, may withdraw all or any of the powers conferred by it under this Code on any person or by any officer subordinate to it

(2) Any powers conferred by the Chief Judicial Magistrate or by the District Magistrate may be withdrawn by the respective Magistrate by whom such powers were conferred

35. Powers of Judges and Magistrates exercisable by their successors-in-office

(1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office

(2) When there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceeding or order thereunder, be deemed to be the successor-in-office of such Additional or Assistant Sessions Judge

(3) When there is any doubt as to who is the successor-in-office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate

CHAPTER IV A—POWERS OF SUPERIOR OFFICERS OF POLICE

36. Powers of superior officers of police—Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station

CHAPTER IV B—AID TO THE MAGISTRATES AND THE POLICE

37. Public when to assist Magistrates and police

Every person is bound to assist a Magistrate or police officer reasonably demanding his aid—

(a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest; or

(b) in the prevention or suppression of a breach of the peace; or

](c) in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property

38. Aid to person other than police officer, executing warrant

When a warrant is directed to a person other than a police officer, any person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant

39. Public to give information of certain offences

(1) Every person, aware of the Commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely: —

(i) sections 121 to 126, both inclusive, and section 130 (that is to say offences against the State specified in Chapter VI of the said Code);

(ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);

(iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);

(iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, *etc*);

(v) sections 302, 303 and 304 (that is to say, offences affecting life);

(va) section 364A (that is to say, offence relating to kidnapping for ransom, *etc*);

(vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);

(vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);

(viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, *etc*);

(ix) sections 431 to 439, both inclusive (that is to say, offence of mischief against property);

(x) sections 449 and 450 (that is to say, offence of house-trespass);

(xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house-trespass); and

(xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes) shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such Commission or intention;

(2) For the purposes of this section, the term "**offence**" includes any act committed at any place out of India which would constitute an offence if committed in India

40. Duty of officers employed in connection with the affairs of a village to make certain report

(1). Every officer employed in connection with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which he may possess respecting—

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in or near such village;

(b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(c) the Commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, section 144, section 145, section 147 or section 148 of the Indian Penal Code (45 of 1860);

(d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person;

(e) the Commission of, or intention to commit, at any place out of India near such village any act which, if committed in India, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 231 to 238 (both inclusive), sections 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 457, to 460 (both inclusive), sections 489A, 489B, 489C and 489D;

(f) any matter likely to affect the maintenance of order of the prevention of crime or the safety of person or property respecting which the District Magistrate by general or special order made with the previous sanction of the State Government, has directed him to communicate information

(2) In this section,—

(i) "village" includes village-lands;

(ii) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority in any territory in India to which this code does not extend, in respect of any act which if committed in the territories to which this Code extends, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 302, 304, 382, 392 to 399 (both inclusive), sections 402, 435, 436, 449, 450 and 457 to 460 (both inclusive);

(iii) the words "officer employed in connection with the affairs of the village" means a member of the panchayat of the village and includes the headman and every officer or other person appointed to perform any function connected with the administration of the village

CHAPTER V - ARREST OF PERSONS

41. When police may arrest without warrant

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonable suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 365; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition

(2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of person specified in section 109 or section 110

42. Arrest on refusal to give name and residence

(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required: Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction

43. Arrest by private person and procedure on such arrest

(1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station

(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him

(3) If there is reason to believe that he has committed a non-cognizable offence and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released

44. Arrest by Magistrate

(1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant

45. Protection of members of the Armed Forces from arrest

(1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government

(2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "**Central Government**" occurring therein, the expression "**State Government**" were substituted

STATE AMENDMENT

Assam:
For sub-section (2) of section 45, the following sub-section shall be substituted, namely:—
`(2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply—

(a) to such class or category of the members of the Forces charged with the maintenance of public order, or

(b) to such class or category of other public servants [not being persons to whom the provisions of sub-section (1) apply charged with the maintenance of public order, as may be specified in

notification, wherever, they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted'
[*Vide* President's Act 3 of 1980, sec 2 (wef 5-6-1980)

46. Arrest how made

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life

47. Search of place entered by person sought to be arrested

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him such free ingress thereto, and afford all reasonable facilities for a search therein

(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purposes, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein

48. Pursuit of offenders into other jurisdictions

A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India

49. No unnecessary restraint

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape

50. Person arrested to be informed of grounds of arrest and of right to bail

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf

51. Search of arrested persons

(1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail

The officer making the arrests or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency

52. Power to seize offensive weapons

The officer or other person making any arrest under this Code may taken from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested

53. Examination of accused by medical practitioner at the request of police officer

(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonable necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner

Explanation—In this section and in section 54, "**registered medical practitioner**" means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), and whose name has been entered in a State Medical Register

54. Examination of arrested person by medical practitioner at the request of the arrested person

When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice

STATE AMENDMENT

Uttar Pradesh:

In section 54, the following sentence shall be inserted at the end, namely:—

"The registered medical practitioner shall forthwith furnish to the arrested person a copy of the report of such examination free of cost"

55. Procedure when police officer deputes subordinate to arrest without warrant

(1) When any officer in charge of a police station or any police officer making an investigation under Chapter XII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested

and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order

(2) Nothing in sub-section (1) shall affect the power of a police officer to arrest a person under section 41

56. Person arrested to be taken before Magistrate or officer in charge of police station

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station

57. Person arrested not to be detained more than twenty-four hours

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court

58. Police to report apprehensions

Officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise

59. Discharge of person apprehended

No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate

60. Powers, on escape, to pursue and re-take

(1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India

(2) The provisions of section 47 shall apply to arrests under sub-section (1) although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest

CHAPTER VI - PROCESSES TO COMPEL APPEARANCE

A—Summons

61. Form of summons—Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

62. Summons how served

(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

63. Service of summons on corporate bodies and societies

Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed, to have been effected when the letter would arrive in ordinary course of post.

Explanation—In this section "**corporation**" means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860)

64. Service when persons summoned cannot be found —

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate

Explanation—A servant is not a member of the family within the meaning of this section

65. Procedure when service cannot be effected as before provided

If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

66. Service on Government servant

(1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service

67. Service of summons outside local limits

When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

68. Proof of service in such cases and when serving officer not present –

(1) When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court

69. Service of summons on witness by post

(1) Notwithstanding anything contained in the preceding section of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain

(2) When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served

STATE AMENDMENT

Andaman and Nicobar Islands and Lakshadweep:

In section 69,—

(a) in sub-section (1), after the words "**to be served by registered post**" the words "or of the substance thereof to be served by wireless message" shall be inserted .

(b) in sub-section (2), for the words "that the witness refused to take delivery of the summons" the words "or a wireless messenger that the witness refused to take delivery of the summons or the message, as the case may be" shall be substituted
[*Vide* Regulation 6 of 1977, sec 2 (wef 17-11-1977)

B—Warrant of arrest

70. Form of warrant of arrest and duration

(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed

71. Power to direct security to be taken

(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court the officer to whom the warrant is directed shall take such security and shall release such person from custody

(2) The endorsement shall state—
(a) the number of sureties;

72. Warrants to whom directed

(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them

73. Warrant may be directed to any person

(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

74. Warrant directed to police officer

A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed .

75. Notification of substance of warrant

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

76. Person arrested to be brought before Court without delay

The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

77. Where warrant may be executed

A warrant of arrest may be executed at any place in India

78. Warrant forwarded for execution outside jurisdiction

(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person

79. Warrant directed to police officer for execution outside jurisdiction -

(1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it

80. Procedure of arrest of person against whom warrant issued

When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner

81. Procedure by Magistrate before whom such person arrested is brought

(1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78 to release such person on bail

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71

STATE AMENDMENT

Uttar Pradesh:

In sub-section (1) of section 81, the following third proviso shall be inserted, namely:—

"Provided also that where such person is not released on bail or where he fails to give such security as aforesaid, the Chief Judicial Magistrate in the case of a non-bailable offence or any Judicial Magistrate in the case of a bailable offence may pass such orders as he thinks fit for his custody till such time as may be necessary for his removal to the Court which issued that warrant"
Vide UP Act 1 of 1984, sec 9 (wef 1-5-1984)

C—Proclamation and attachment

82. Proclamation for person absconding

(1) If Any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation

(2) The proclamation shall be published as follows—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day

83. Attachment of property of person absconding

(1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:
Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908)

84. Claims and objections to attachment

(1) If any claim is preferred to, or objection made to the attachment of, any property attached under section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative

(2) Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub-section (2) of section 83, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made

(3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive

85. Release, sale and restoration of attached property

(1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment

(2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under section 84 has been disposed of under that section; unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit

(3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub-section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him

86. Appeal from order rejecting application for restoration of attached property

Any person referred to in sub-section (3) of section 85, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first-mentioned Court

D—Other rules regarding processes

87. Issue of warrant in lieu of, or in addition to, summons

A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure

88. Power to take bond for appearance

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial

89. Arrest on breach of bond for appearance

When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him

90. Provisions of this Chapter generally applicable to summons and warrants of arrest

The provisions contained in this Chapter relating to a summons and warrants, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code

Chapter VII - PROCESSES TO COMPEL THE PRODUCTION OF THINGS

A—Summons to produce

91. Summons to produce document or other thing

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same

(3) Nothing in this section shall be deemed—

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891(13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority

92. Procedure as to letters and telegrams

(1) If any document, parcel or thing in the custody of a postal or telegraph authority is, in the opinion of the District Magistrate, Chief Judicial Magistrate, Court of Session or High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the postal or telegraph authority, as the case may be, to deliver the document, parcel or thing to such person as the Magistrate or Court directs

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, whether Executive or Judicial, or of any Commissioner of police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authority, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or Court under sub-section (1)

B—Search-warrants

93. When search-warrant may be issued

(1) (a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b) where such document or thing is not known to the Court to be in the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority

94. Search of place suspected to contain stolen property, forged documents, *etc*

(1) If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is

deposited in any place, he may by warrant authorise any police officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place,

(b) to search the same in the manner specified in the warrant,

(c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies,

(d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety,

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this section applies

(2) The objectionable articles to which this section applies are—

(a) counterfeit coin;

(b) pieces of metal made in contravention of the Metal Tokens Act, 1889 (1 of 1889), or brought into India in contravention of any notification for the time being in force under section 11 of the Customs Act, 1962 (52 of 1962);

(c) counterfeit currency note; counterfeit stamps;

(d) forged documents;

(e) false seals;

(f) obscene objects referred to in section 292 of the Indian Penal Code (45 of 1860);

(g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f)

95. Power to declare certain publications forfeited and to issue search-warrants for the same

(1) Where—

(a) any newspaper, or book, or

(b) any document, wherever printed appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be

(2) In this section and in section 96,—

(a) "newspaper" and "book" have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867);

(b) "document" includes any painting, drawing or photograph, or other visible representation

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 96

96. Application to High Court to set aside declaration of forfeiture

(1) Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under section 95, may, within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is referred to in sub-section (1) of section 95

(2) Every such application shall, where the High Court consists of three or more Judges, be heard and determined by a Special Bench of the High Court composed of three Judges and where the High Court consists of less than three Judges, such Special Bench shall be composed of all the Judges of that High Court

(3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made

(4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in sub-section (1) of section 95, set aside the declaration of forfeiture

(5) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges

Comments

State Government issued order of forfeiture of book on the ground that it contained matter punishable under sections 124A 153A and 295A High Court may set aside such order if opinion of Government is not found correct; *Hemandas* v *State of Uttar Pradesh*, AIR 1961 SC 1662: (1961) 2 Cr LJ 815

97. Search for persons wrongfully confined

If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue, a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper

98. Power to compel restoration of abducted females

Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge or such child, and may compel compliance with such order, using such force as may be necessary

C—General provisions relating to searches

99. Direction, *etc*, of search-warrants

The provisions of sections 38, 70, 72, 74, 77, 78 and 79 shall, so far as may be, apply to all search-warrants issued under section 93, section 94, section 95 or section 97

100. Persons in charge of closed place to allow search

(1) Whenever any place liable to search of inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860)

Comments

(i) Public witnesses may not be joined, but attempt must be made to join the public witnesses; *Sadhu Singh* v *State of Punjab*, (1997) 3 Crimes 55 (PH)

(ii) There can be cases when public witnesses are reluctant to join or are not available All the same, the prosecution must show a genuine attempt having been made to join public witnesses; *Sadhu Singh* v *State of Punjab*, (1997) 3 Crimes 55 (PH)

(iii) A stereo-type statement of non-availability of any Public witness will not be sufficient particularly when at the relevant time, it was not difficult to procure the services of public witness, *Sadhu Singh* v *State of Punjab*, (1997) 3 Crimes 55 (PH)

101. Disposal of things found in search beyond jurisdiction

When, in the execution of a search-warrant at any place beyond the local jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the

Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court

D—Miscellaneous

102. Power of police officer to seize certain property—

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same

Comment

The bank account of the accused or any of his relation to `property' within the meaning of section 102 of Criminal Procedure Code and police officer in course of investigation can seize the operation of said account if such assets have direct link with the commission of offence for which the police officer is investigating into; *State of Maharashtra* v *Tapas D Neogy*, 1999 (7) SCC 685: 1999 (5) Scale 613: 1999 (7) JT 92: 1999 (8) Supreme 149

103. Magistrate may direct search in his presence
Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant

104. Power to impound document, *etc*, produced
Any Court may, if it thinks fit, impound any document or thing produced before it under this Code

105. Reciprocal arrangements regarding processes

(1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories desires that—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant, issued by it shall be served or executed at any place,—

(i) within the local jurisdiction of a Court in any State or area in India outside the said territories, it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) in any country of place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the contracting State), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and sent to such authority for transmission, as the Central Government may, by notification, specify in this behalf

(2) Where a Court in the said territories has received for service or execution—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other things or to produce it, or

(d) a search-warrant, issued by—

(i) a Court in any State or are in India outside the said territories;

(ii) a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 80 and 81;

(ii) a search warrant has been executed, the things found in the search shall, so far as possible, be dealt with in accordance with the procedure prescribed by section 101:

Provided that in a case where a summons or search warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search warrant through such authority as the Central Government may, by notification, specify in this behalf

CHAPTER VIIA - RECIPROCAL ARRANGEMENTS FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND FORFEITURE OF PROPERTY

105A. Definitions—In this Chapter, unless the context otherwise requires,—

(a) "**contracting State**" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

(b) "**identifying**" includes establishment of a proof that the property was derived from, or used in, the Commission of an offence;

(c) "**proceeds of crime**" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property;

(d) "**property**" means property and assets of every description whether corporeal or incorporeal, movable or immovable tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the Commission of an offence and includes property obtained through proceeds of crime;

(e) **"tracing**" means determining the nature source, disposition, movement, title or ownership of property

105B. Assistance in securing transfer of persons

(1) Where a Court in India, in relation to a criminal matter, desires that a warrant for arrest of any person to attend or produce a document or other thing issued by it shall be executed in any place in a contracting State, it shall send such warrant in duplicate in such form to such Court, Judge or Magistrate through such authority, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed

(2) Notwithstanding anything contained in this Code, if, in the course of an investigation or any inquiry into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that the attendance of a person who is in any place in a contracting State is required in connection with such investigation or inquiry and the Court is satisfied that such attendance is so required, it shall issue a summons or warrant, in duplicate, against the said person to such Court, Judge or Magistrate, in such form as the Central Government may, by notification, specify in this behalf, to cause the same to be served or executed

(3) Where a Court in India, in relation to a criminal matter, has received a warrant for arrest of any person requiring him to attend or attend and produce a document or other thing in that Court or before any other investigating agency, issued by a Court, Judge or Magistrate in a contracting State, the same shall be executed as if it is the warrant received by it from another Court in India for execution within its local limits

(4) Where a person transferred to a contracting State pursuant to sub-section (3) is a prisoner in India, the Court in India or the Central Government may impose such conditions as that Court or Government deems fit

(5) Where the person transferred to India pursuant to sub-section (1), or sub-section (2) is a prisoner in a contracting State, the Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing

105C. Assistance in relation to orders of attachment or forfeiture of property

(1) Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence, it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J (both inclusive)

(2) Where the Court has made an order for attachment or forfeiture of any property under sub-section (1), and such property is suspected to be in a contracting State, the Court may issue a letter of request to a Court or an authority in the contracting State for execution of such order

(3) Where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J (both inclusive) or, as the case may be, any other law for the time being in force

105D. Identifying unlawfully acquired property

(1) The Court shall, under sub-section (1), or on receipt of a letter of request under sub-section (3) of section 105C, direct any police officer not below the rank of Sub-Inspector of Police to take all steps necessary for tracing and identifying such property

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions issued by the said Court in this behalf

105E. Seizure or attachment of property

(1) Where any officer conducting an inquiry or investigation under section 105D has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed, transferred or dealt with in any manner which will result in disposal of such property, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the said Court, within a period of thirty days of its being made

105F. Management of properties seized or forfeited under this Chapter

(1) The Court may appoint the District Magistrate of the area where the property is situated, or any other officer that may be nominated by the District Magistrate, to perform the functions of an Administrator of such property

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which the order has been made under sub-section (1) of section 105E or under section 105H in such manner and subject to such conditions as may be specified by the Central Government

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government

105G Notice of forfeiture of property

(1) If as a result of the inquiry, investigation or survey under section 105D, the Court has reason to believe that all or any of such properties are proceeds of crime, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the source of income, earning or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be proceeds of crime and forfeited to the Central Government

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person

105H. Forfeiture of property in certain cases

(1) The Court may, after considering the explanation, if any, to the show-cause notice issued under section 105G and the material available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are proceeds of crime:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the Court or represent his case before it within a period of thirty days specified in the show-cause notice, the Court may proceed to record a finding under this sub-section *ex parte* on the basis of evidence available before it

(2) Where the Court is satisfied that some of the properties referred to in the show cause notice are proceeds of crime but it is not possible to identify specifically such properties, then, it shall be lawful for the Court to specify the properties which, to the best of its judgement, are proceeds of crime and record a finding accordingly under sub-section (1)

(3) Where the Court records a finding under this section to the effect that any property is proceeds of crime, such property shall stand forfeited to the Central Government free from all encumbrances

(4) Where any shares in a company stand forfeited to the Central Government under this section, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares

105I. Fine in lieu of forfeiture

(1) Where the Court makes a declaration that any property stands forfeited to the Central Government under section 105H and it is a case where the source of only a part of such property has not been proved to the satisfaction of the Court, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the Court may, by order, revoke the declaration of forfeiture under section 105H and thereupon such property shall stand released

105J. Certain transfers to be null and void

Where after the making of an order under sub-section (1) of section 105E or the issue of a notice under section 105G, any property referred to in the said order or notice is transferred by any mode whatsoever such transfers shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 160H, then the transfer of such property shall be deemed to be null and void

105K. Procedure in respect of letter of request

Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India in such form and in such manner as the Central Government may, by notification, specify in this behalf

105L. Application of this Chapter

The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification

CHAPTER VIII -SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

106. Security for keeping the peace on conviction—

(1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit

(2) The offences referred to in sub-section (1) are—

(a) any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence, punishable under section 153A or section 153B or section 154 thereof;

(b) any offence which consists of, or includes, assault or using criminal force or committing mischief;

(c) any offence of criminal intimidation;

(d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void

(4) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision

107. Security for keeping the peace in other cases

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit

(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction

Comments

Under trial prisoners are not released on bail and remained in jail for 6 months Release of undertrial due to delay in trial is proper; *RD Upadhayaya* v *State of Andhra Pradesh*, 1999 (1) Scale 139

108. Security for good behaviour from persons disseminating seditious matters

(1) When an Executive Magistrate receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,—

(i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,—

(a) any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 295A of the Indian Penal Code (45 of 1860), or

(b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Indian Penal Code

(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code (45 of 1860), and the magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit

(2) No proceeding shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867), with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf

109. Security for good behaviour from suspected persons

When an Executive Magistrate receive information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit

110. Security for good behaviour from habitual offenders

When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment of disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the Commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the Commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(c) the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952);

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962); or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit

Comments

The Court must have specific facts and satisfied that counter petitioner is sure to commit offences mentioned if he is not kept in custody; *Gopalalnchari* v *State of Kerala*, 1981 SCCr R 338

111. Order to be made

When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required

112. Procedure in respect of person present in Court

If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him

113. Summons or warrant in case of person not so present

If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:

Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the Commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest

Comments

It is as clear as day that before taking steps for arrest the Magistrate must have reasons to fear the Commission of breach of the peace and it must appear to him that such breach of peace cannot be prevented otherwise than by immediate arrest of the alleged person It is incumbent upon the Magistrate to record an order in writing showing satisfaction for the steps taken under the proviso to section 113 of the Criminal Procedure Code; *Dibakar Naik* v *Puspalata Patel*, (1997) 3 Crimes 107 (Ori)

114. Copy of order to accompany summons or warrant

Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same

115. Power to dispense with personal attendance

The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behaviour and may permit him to appear by a pleader

116. Inquiry as to truth of information

(1) When an order under section 111 has been read or explained under section 112 to a person in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases

(3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the Commission of any offence or for the public safety, may, for reason to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:
Provided that—

> (a) no person against whom proceedings are not being taken over under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;
>
> (b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt within the same or separate inquiries as the Magistrate shall think just

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs :

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse

117. Order to give security

If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:
Provided that—

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;

(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties

118. Discharge of person informed against

If, on an inquiry under section 116, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him

119. Commencement of period for which security is required

(1) If any person, in respect of whom an order requiring security is made under section 106 or section 117, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date

120. Contents of bond

The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the Abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond

121. Power to reject sureties

(1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond;
Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an enquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him

(2) Such Magistrate shall, before holding the inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall, in making the inquiry, record the substance of the evidence adduced before him

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before, a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any), that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing:

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him

122. Imprisonment in default of security

(1) (a) If any person ordered to give security under section 106 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if, he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it

(b) If any person after having executed a bond without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Court

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, and after giving the concerned person a reasonable opportunity of being heard, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years

(4) If security has been required in the course of the same proceeding from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also except that the period (if any) for which he may be imprisoned, shall not exceed the period for which he was ordered to give security

(5) A Sessions Judge may in his discretion transfer any proceeding laid before him under sub-section (2) or sub-section (4) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings

(6) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate

(7) Imprisonment for failure to give security for keeping the peace shall be simple

(8) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs

123. Power to release persons imprisoned for failing to give security

(1) Whenever the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the High Court or Court of Session, or, where the order was made by any other Court, the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case, may make an order reducing the amount of the security or the number of sureties or the time for which security has been required

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts:
Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired

(4) The State Government may prescribe the conditions upon which a conditional discharge may be made

(5) If any condition upon which any person has been discharged is, in the opinion of the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case

(7) Unless such person gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case may remand such person to prison to undergo such unexpired portion

(8) A person remanded to prison under sub-section (7) shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor

(9) The High Court or Court of Sessions may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this

Chapter by any order made by it, and the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case may make such cancellation where such bond was executed under his order or under the order of any other Court in his district

(10) Any surety for the peaceable conduct or good behaviour of another person, ordered to execute a bond under this Chapter may at any time apply to the Court making such order to cancel the bond and on such application being made, the Court shall issue a summons or warrant, as it thinks fit, requiring the person for whom such surety is bound to appear or to be brought before it

124. Security for unexpired period of bond

(1) When a person for whose appearance a summons or warrant has been issued under the proviso to sub-section (3) of section 121 or under sub-section (10) of section 123, appears or is brought before the Magistrate or Court, the Magistrate or Court shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same person description as the original security

(2) Every such order shall, for the purposes of sections 120 to 123 (both inclusive) Be deemed to be an order made under section 106 or section 117, as the case may be

CHAPTER IX - ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARENTS

125. Order for maintenance of wives, children and parents,

(1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means

Explanation—For the purposes of this Chapter—

(a) "**minor**" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "**wife**" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any port of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing

Explanation—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order

STATE AMENDMENTS

Madhya Pradesh:

In sub-section (1) of section 125 of the Act for the words "five hundred rupees" the words "three thousand rupees" shall be *substituted*

[*Vide* MP (Act 10 of 1998), sec 3 (wef 29-5-1998)

Maharashtra:
In Section 125 of the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra:—
(a) in sub-section (1),—

(i) for the words "not exceeding five hundred rupees" the words "not exceeding fifteen hundred rupees" shall be substituted;

(ii) before the existing proviso, the following proviso shall be inserted, namely:—

Provided that, the Magistrate on an application or submission being made, supported by an affidavit by the person who has applied for the maintenance under this sub-section, for payment of *interim* maintenance, on being satisfied that, there is a *prima facie* ground for making such order, may direct the person against whom the application for maintenance has been made, to pay a reasonable amount by way of *interim* maintenance to the applicant, pending the final disposal of the maintenance application:

Provided further that, such order for payment of *interim* maintenance may, in an appropriate case, also be made by the Magistrate *ex parte*, pending service of notice of the application, subject, however, to the condition that such an order shall be liable to be modified or even cancelled after the respondent is heard in the matter:

Provided also that, subject to the ceiling laid down under this sub-section, the amount of *interim* maintenance shall, as far as practicable, be not less than thirty per cent of the monthly income of the respondent";

(iii) in the existing proviso, for the words "Provided that" the words "Provided also that" shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

(2A) Notwithstanding anything otherwise contained in sub-sections (1) and (2), where an application is made by the wife under clause (a) of sub-section (1) for the maintenance allowance, the applicant may also seek relief that the order may be made for the payment of maintenance allowance in lump-sum in lieu of the payment of monthly maintenance allowance, and the Magistrate may, after taking into consideration all the circumstances obtaining in the case including the factors like the age, physical condition, economic conditions and other liabilities and commitments of both the parties, pass an order that the respondent shall pay the maintenance allowance in lump-sum in lieu of the monthly maintenance allowance, covering a specified period, not exceeding five years at a time, or for such period which may exceed five years, as may be mutually agreed to, by the parties";

(c) in sub-section (3),—
(i) after the words "so ordered" the words, brackets, figures and letter "either under sub-section (1) or sub-section (2A), as the case may be," shall be inserted;

126. Procedure

(1) Proceedings under section 125 may be taken against any person in any district—

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child

(2) All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just

127. Alteration in allowance

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father of mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit:

Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order—

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under section 125, the civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order

STATE AMENDMENT

Maharashtra:
In section 127 of the said Code,—

(a) in sub-section (1), in the proviso, for the words "five hundred rupees" the words "fifteen hundred rupees" shall be substituted;

(b) in sub-section (4),—

(i) for the words "monthly allowance", where they occur for the first time, the words "maintenance allowance" shall be substituted;

(ii) after the words "monthly allowance", where they occur for the second time, the words "or, as the case may be, the lump-sum allowance" shall be inserted
[*Vide* Maharashtra Act, 21 of 1999 sec 3 (wef 20-4-1999)

Tripura:

In the principal Act, in proviso to sub-section (1) of section 127, for the words "five hundred rupees", the words "one thousand five hundred rupees" shall be substituted
[*Vide* Tripura Act 9 of 1999 sec 3 (wef 9-4-1999)

West Bengal:

In the proviso to sub-section (1) of section 127, for the words "five hundred rupees" the words "one thousand and five hundred rupees" shall be substituted
[*Vide* WB Act 14 of 1995, sec 2 (wef 2-8-1995)

Comments

Under section 127 (1) of the Code the magistrate is bound to give effect to an order of a competent civil Court and vary or cancel the order for maintenance made under section 125 of the Code; *Hem Raj* v *Urmila Devi*, (1997) 2 Crimes 561 (HP)

128. Enforcement of order of maintenance

A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due

CHAPTER X - MAINTENANCE OF PUBLIC ORDER AND TRANQUILLITY

A—Unlawful assemblies

129. Dispersal of assembly by use of civil force

(1) Any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any make person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law

130. Use of armed forces to disperse assembly

(1) If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces

(2) Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law

(3) Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons

132. Protection against prosecution for acts done under preceding sections

(1) No prosecution against any person for any act purporting to be done under section 129, section 130 or section 131 shall be instituted in any Criminal Court except—

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces;

(b) with the sanction of the State Government in any other case

(2) (a) No Executive Magistrate or police officer acting under any of the said sections in good faith;

(b) no person doing any act in good faith in compliance with a requisition under section 129 or section 130;

(c) no officer of the armed forces acting under section 131 in good faith;

(d) no member of the armed forces doing any act in obedience to any order which he was bound to obey, shall be deemed to have thereby, committed an offence

(3) In this section and in the preceding sections of this Chapter,—

(a) the expression "**armed forces**" means the military, naval and air forces, operating as land forces and includes any other Armed Forces of the Union so operating;

(b) "**officer**" in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant officer, a petty officer, a non-commissioned officer and a non-gazetted officer;

(c) "**member**" in relation to the armed forces, means a person in the armed forces other than an officer

B—Public nuisances

133. Conditional order for removal of nuisance -

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute

(2) No order duly made by a Magistrate under this section shall be called in question in any civil Court

Explanation—A "**public place**" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes

134. Service or notification of order -

(1) The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the State Government may, by rules, direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person

135. Person to whom order is addressed to obey or show cause -

The person against whom such order is made shall—

(a) perform, within the time and in the manner specified in the order, the act directed thereby; or

(b) appear in accordance with such order and show cause against the same

136. Consequences of his failing to do so -

If such person does not perform such act or appear and show cause, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code (45 of 1860,) and the order shall be made absolute

137. Procedure where existence of public right is denied -

(1) Where an order is made under section 113 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 138, inquire into the matter

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court; and if he finds that there is no such evidence, he shall proceed as laid down in section 138

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial

138. Procedure where he appears to show cause

(1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification
(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case

139. Power of Magistrate to direct local investigation and examination of an expert

The Magistrate may, for the purposes of an inquiry under section 137 or section 138—

(a) direct a local investigation to be made by such person as he thinks fit; or

(b) summon and examine an expert

140. Power of Magistrate to furnish written instructions, *etc*

(1) Where the Magistrate directs a local investigation by any person under section 139, the Magistrate may—

(a) furnish such person with such written instruction as may seem necessary for his guidance;

(b) declare by whom the whole or any part of the necessary expenses of the local investigation shall be paid

(2) The report of such person may be read as evidence in the case

(3) Where the Magistrate summons and examines an expert under section 139, the Magistrate may direct by whom the costs of such summoning and examination shall be paid

141. Procedure on order being made absolute and consequences of disobedience

(1) When an order has been made absolute under section 136 or section 138, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code (45 of 1860)

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without such Magistrate's local jurisdiction and if such other property is without such jurisdiction, the order shall authorise its attachment and sale when endorsed by the Magistrate within whose local jurisdiction the property to be attached is found

(3) No suit shall lie in respect of anything done in good faith under this section

142. Injunction pending inquiry

(1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section

143. Magistrate may prohibit repetition or continuance of public nuisance

A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860), or any special or local law

C—Urgent cases of nuisance or apprehended danger

144. Power to issue order in urgent cases of nuisance or apprehended danger

(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4)

(7) Where an application under sub-section (5), or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order, and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing

Comments

(1) Order under section 144 is amenable to writ jurisdiction on violation of any Fundamental Right; *Gulam Abbas* v *State of Uttar Pradesh*, AIR 1981 SC 2198 : (1981) Cr LJ 1835

(2) As far as possible customary right of a community should not be disturbed; *Gulam Abbas* v *State of Uttar Pradesh*, AIR 1981 SC 2198: (1981) Cr LJ 1835

D—Disputes as to immovable property

145. Procedure where dispute concerning land or water is likely to cause breach of peace

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property

(3) A copy of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thanks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1)

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3)

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107

STATE AMENDMENT

Maharashtra:

In section 145,—
(a) in sub-section (1), for the words "whenever an Executive Magistrate" the words "Whenever in Greater Bombay, a Metropolitan Magistrate and elsewhere in the State, an Executive Magistrate" shall be substituted;

(a) for sub-section (10), the following sub-section shall be substituted, namely:—
"(10) In the case of an Executive Magistrate taking action under this section nothing in this section shall be deemed to be in derogation of his power to proceed under section 107 In the case of a Metropolitan Magistrate taking action under this section, if at any stage of the proceeding, he is of the opinion that the dispute calls for an action under section 107, he shall after recording his reasons, forward the necessary information to the Executive Magistrate having jurisdiction, to enable him to proceed under that section"
[*Vide* Maharashtra Act 1 of 1978 (wef 15-4-1978)

146. Power to attach subject of dispute and to appoint receiver -

(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit Appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any civil Court, the Magistrate—

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just

Comments
(i) The determination of rights by the competent Court of the parties spoken of in section 146 has not necessarily to be a final determination, it may be even tentative at the interim stage when the competent Court passes an order of interim injunction or appoints a receiver in respect of subject matter of dispute pending final decision in the suit; *Dharampal* v *Smt Ramshri,* 1993 (1) Crimes 304 (SC)

(ii) Passing of order without proper enquiry is nullity; *CKP Mennon* v *KP Sulaiman*, 2000 Cr LJ 221 (Mad)

147. Dispute concerning right of use of land or water -

(1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims

Explanation—The expression "**land or water**" has the meaning given to it in sub-section (2) of section 145

(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt

(4) When in any proceedings commenced under sub-section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right to user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1); and when in any proceedings commenced under sub-section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) of section 145

STATE AMENDMENT

Maharashtra:

In sub-section (1) of section 147, for the words "Whenever an Executive Magistrate" the words "Whenever in greater Bombay, a Metropolitan Magistrate and elsewhere in the State, an Executive Magistrate" shall be substituted
[*Vide* Maharashtra Act 1 of 1978 (wef 15-4-1978)

148. Local inquiry -

(1) Whenever a local inquiry is necessary for the purposes of section 145, section 146 or section 147, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid

(2) The report of the person so deputed may be read as evidence in the case

(3) When any costs have been incurred by any party to a proceeding under section 145, section 146 or section 147, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and of pleaders' fees, which the Court may consider reasonable

CHAPTER XI - PREVENTIVE ACTION OF THE POLICE

149. Police to prevent cognizable offences -

Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

150. Information of design to commit cognizable offences -

Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence

151. Arrest to prevent the commission of cognizable offences -

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented

2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.

STATE AMENDMENT

Maharashtra:

In section 151,—

(a) in sub-section (2), after the words "required or authorised" the words, "under sub-section (3) or" shall be inserted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—
"(3) (a) Where a person is arrested under this section and the officer making the arrest, or the officer in charge of the police station before whom the arrested person is produced, has reasonable grounds to believe that the detention of the arrested person for a period longer than

twenty-four hours from the time of arrest (excluding the time required to take the arrested person from the place of arrest to the Court of a Judicial Magistrate) is necessary by reason that—

(i) The person is likely to continue the design to commit, or is likely to commit, the cognizable offence referred to in sub-section (1) after his release; and

(ii) the circumstances of the case are such that his being at large is likely to be prejudicial to the maintenance of public order, the officer making the arrest, or the officer in charge of the police station, shall produce such arrested person before the nearest Judicial Magistrate, together with a report in writing stating the reasons for the continued detention of such person for a period longer than twenty-four hours

(b) Notwithstanding anything contained in this Code or any other law for the time being in force, where the Magistrate before whom such arrested person is produced is satisfied that there are reasonable grounds for the temporary detention of such person in custody beyond the period of twenty-four hours, he may, from time to time, by order remand such person to such custody as he may think fit:

Provided that, no person shall be detained under this section for a period exceeding fifteen days at a time, and for a total period exceeding thirty days from the date of arrest of such person

(c) When any person is remanded to custody under clause (b), the Magistrate shall, as soon as may be communicate to such person the grounds on which the order has been made and such person may make a representation against the order to the Court of Session The Sessions Judge may, on receipt of such representation after holding such inquiry as he deems fit, either reject the representation, or if he considers that further detention of the arrested person is not necessary, or that it is otherwise proper and just so to do, may vacate the order and the arrested person shall then be released forthwith"
[*Vide* Maharashtra Act 7 of 1981

152. Prevention of injury to public property

A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation

153. Inspection of weights and measures

(1) Any officer in charge of a police station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction

CHAPTER XII - INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

154. Information in cognizable cases -

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence

Comments

(i) Section 154 speaks of an information relating to the commission of a cognizable offence given to an officer-in-charge of police station *Abzauddin Ansary* v *State of West Bengal,* (1997)2 Crimes 53 (Cal) (DB)

(ii) The answer to the question whether the FIR in a given case has been

155. Information as to non-cognizable cases and investigation of such cases

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable

156. Police officer's power to investigate cognizable cases

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned

Comments

(i) The Magistrate has no power to take cognizance of an offence on basis of private complaint that resulted in submission of the report under section 173 consequent upon reference under section 156 (3) when once he has accepted negative police report and closed the proceedings; *S D Soni* v *State of Gujarat*, (1991) Cr LJ 330 (SC)

(ii) Rejection of prosecution case on ground of illegality or irregularity not proper; *Leela Ram* v *State of Haryana*, 1999 (8) JT 274: 1999 (8) Supreme 631

(iii) Conclusion of Court cant not be allowed to base solely on the probity of investigation; *State of Karnataka* v *K Yarappa Reddy*, 1994 (8) SCC 715: 1999 (6) Scale 330: 1999 (8) JT 10

157. Procedure for investigation

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and

circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:
Provided that—

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements to that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated

COMMENTS

Section 157 casts a duty upon the investigating officer to forthwith send the report of the cognizable offence to the concerned Magistrate The purpose for forthwith sending the report to the concerned Magistrate is to keep the concerned Magistrate informed of the investigation of a cognizable offence so that he may be able to control the investigation and if required, to issue appropriate directions Mere delay in the despatch of the FIR itself is no ground to throw away the prosecution case in its entirety Sending the report to the concerned Magistrate is a circumstance which provides a basis to raise suspicion that the FIR is the result of consultation and deliberations and it was recorded much later than the date and time mentioned in it, and discloses that the investigation is not fair and forth right; *Swati Ram* v *State of Rajasthan,* (1997) 2 Crimes 148 (Raj)

158. Report how submitted

(1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf

(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate

159. Power to hold investigation or preliminary inquiry

Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Code

160. Police Officer's power to require attendance of witnesses

(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence]

161. Examination of witnesses by police -

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records

Comments

(i) The value of prompt interrogation of a witness during investigation cannot be over emphasised because the same eliminates to a very large extent, the possibility of an adulterated occurrence creeping in the testimony of a witness; *State of Maharashtra* v *Joseph Mingal Koli*, (1997) 2 Crimes 228 (Bom)

(ii) Investigating officer has to perform his duties with the sole object of investigating the allegations and in the course of the investigation he has to take into consideration the relevant material whether against or in favour of the accused; *Mohd Jainal Aladin* v *State of Assam*, (1997)2 Crimes 660 (Gau)

(iii) Where the investigating officer had deliberately failed to record the FIR and prepared it after reaching the spot after due deliberations, the investigation is tainted and it would be unsafe to rely on such tainted investigation; *Mantram* v *State of Madhya Pradesh*, (1997) 2 Crimes 550 (MP)

(iv) Recording of statement of injured cannot be held to be admissible in Evidence Act under section 32; *Sukhas* v *State of Uttar Pradesh*, 2000 Cr LJ 29 (SC)

(v) Court while using a previous statement recorded under section 161 Cr P, should bear in mind the restrictions imposed under section 162 of Cr P; *State of Kerala* v *Babu*, 1999 AIR (SC) 2161: 1999 (4) SCC 621: 1999(3) JT 394: 1999 (3) Crimes 27 (SC)

(vi) Court's failure to put any question on reference to statement under section 161, advance impression cannot be drawn by Court; *Dandu Laxmi Reddy* v *State of Andhra Pradesh*, 1999 AIR (SC) 3255: 1999 (7) SCC 69: 1999 (6) JT 166

162. Statements to police not to be signed: Use of statements in evidence

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act

Explanation—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact

Comments

(i) It is only that part of the statement if duly proved which may be used by the accused and with the permission of the Court by the prosecution to contradict the witness concerned in the manner

provided by section 145 of the Indian Evidence Act; *Mohd Jainal Abedin* v *State of Assam,* (1997) 2 Crimes 660 (Gau)

(ii) Statement of witness before investigating officer cannot be used as evidence; *Ramprasad* v *State of Maharashtra*, 1999 AIR (SC) 1969: 1999 (5) SCC 30: 1999 (3) Scale 633: 1999 (4) JT 74

163. No inducement to be offered -

(1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872 (1 of 1872)

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will:

Provided that nothing in this sub-section shall affect the provisions of sub-section (4) of section 164

164. Recording of confessions and statements

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him
(Signed) AB
Magistrate"

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried

STATE AMENDMENT

Andaman and Nicobar Islands and Lakshadweep:

After sub-section (1) of section 164, the following sub-section shall be inserted, namely:—
"(1A) Where, in any island, there is no Judicial Magistrate for the time being, and the State Government is of opinion that it is necessary and expedient so to do that Government may, after consulting the High Court, specially empower any Executive Magistrate (not being a police officer), to exercise the powers conferred by sub-section (1) on a Judicial Magistrate, and thereupon references in section 164 to a Judicial Magistrate shall be construed as references to the Executive Magistrate so empowered"
[*Vide* Regulation 1 of 1974, sec 5 (wef 30-3-1974)

Comments

(i) It is not necessary under section 164 of the Code that the Magistrate should be moved by the police in order that he might record a statement; *Valasamma Mst* v *State of Rajasthan*, (1997) 2 Crimes 651 (Raj)

(ii) There is nothing preventing the witness to go to the Magistrate and request him to record statement, but there is always a discretion with the Magistrate to refuse to record the statement; *Valasamma Mst* v *State of Rajasthan,* (1997) 2 Crimes 651 (Raj)

165 Search by police officer –

(1) Whenever an officer in charge of police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing

cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station

(2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance to the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate

166. When officer in charge of police station may require another to issue search-warrant

(1) An officer in charge of a police station or a police officer not being below the rank of sub-Inspector making an investigation may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100,

and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-sections (1) and (3) of section 165

(5) The owner or occupier of the place searched shall, on application, be furnished free of cost with a copy of any record sent to the Magistrate under sub-section (4)

166A. Letter of request to competent authority for investigation in a country or place outside India -

(1) Notwithstanding anything contained in this Code, if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter

166B. Letter of request from a country or place outside India to a Court or an authority for investigation in India

(1) Upon receipt of a letter of request from a Court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit—

> (i) forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced, or
>
> (ii) send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India

(2) All the evidence taken or collected under sub-section (1), or authenticated copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be,

to the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit

167. Procedure when investigation cannot be completed in twenty-four hours

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be to released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police

Explanation I—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail

Explanation II—If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify

STATE AMENDMENTS

Andaman and Nicobar Islands and Lakshadweep :
In section 167,—

(i) in sub-section (1) after the words "nearest Judicial Magistrate" the words "or, if there is no Judicial Magistrate in an island, to an Executive Magistrate functioning in that island" shall be inserted;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—
"(1A) Where a copy of the entries in diary is transmitted to an Executive Magistrate, reference in section 167 to a Magistrate shall be construed as references to such Executive Magistrate;"

(iii) to sub-section (3), the following proviso shall be added, namely:—
"Provided that no Executive Magistrate other than the District Magistrate or Sub-divisional Magistrate, shall unless he is specially empowered in this behalf by the State Government, authorise detention in the custody of the police"

(iv) to sub-section (4), the following proviso shall be added, namely:—
" Provided that, where such order is made by an Executive Magistrate, the Magistrate making the order shall forward a copy of the order, with his reasons for making it, to the Executive Magistrate to whom he is immediately subordinate"
[*Vide* Regulation 1 of 1974, sec 5 (wef 30-3-1974)

Gujarat:

In the proviso to sub-sec (2) of section 167,—

(i) for paragraph (a), the following paragraph shall be substituted, namely:—
"(a) the Magistrate may authorise detention of the accused person otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding—
(i) one hundred and twenty days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years,
(ii) sixty days, where the investigation relates to any offence;
and on the expiry of the said period of one hundred and twenty days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;
(ii) in paragraph (b), for the words " no Magistrate shall" the words " no Magistrate shall, except for reason to be recorded in writing" shall be substituted;
(iii) the *Explanation* shall be numbered as *Explanation II,* and before *Explanation* II as so remembered, the following *Explanation* shall be inserted, namely:—

Explanation I—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a) the accused person shall be detained in custody so long as he does not furnish bail

Amendment to apply to pending investigation—The provisions of section 167 of the Code of Criminal Procedure, 1973, as amended by this Act, shall apply to every investigation pending immediately, before the commencement of this Act, if the period of detention of the accused person, otherwise than in the custody of the police authorised under that section, had not, at such commencement, exceeded sixty days
[*Vide* President Act 21 of 1976 (wef 7-5-1976)

Haryana:

After section 167, insert the following section namely:—

168. Report of investigation by subordinate police officer –

When any subordinate police officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police station

169. Release of accused when evidence deficient –

If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient, evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial

Comments

Magistrate took cognizance on police report and not on protest petition deemed to have taken cognizance under section 190(1)(b) is cannot be termed to be illegal; *Jabaruddin* v *State of Uttar Pradesh*, 2000 Cr LJ 158 (All)

170. Cases to be sent to Magistrate when evidence is sufficient -

(1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed

(2) When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused

(3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons

(4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report

171. Complainant and witnesses not to be required to accompany police officer and not to be subject to restraint

No complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subject to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed

172. Diary of proceeding in investigation

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceeding in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply

173. Report of police officer on completion of investigation -

(1) Every investigation under this Chapter shall be completed without unnecessary delay

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given

(3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5)

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)

Comments

(i) The "police report" (result of investigation under Chapter XII of the Code of Criminal Procedure is a conclusion that an investigating officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent Court to take cognizance there upon under section 190 (1) (b) of the Code and to proceed with the case for trial, and it cannot rely on the investigation or the result thereof; *Kaptan Singh* v *State of Madhya Pradesh,* (1997) 4 Supreme 211

(ii) Criminal Procedure Code, 1973 section 173 (8) - reinvestigation - Power of police to conduct further investigation, even after laying final report, is recognised under section 173 (8) of Cr P; *Sri BSSVVV Maharaj* v *State of Uttar Pradesh*, 1999 Cr LJ 3661 (SC)

(iii) Direction to police to conduct further investigation of case Court not obliged to hear the accused; *Shri Bhagwan Samardha Sree Pada Vallabha Venkata Vishwandadha Maharaj* v *State of Andhra Pradesh*, 1999 AIR (SC) 2332: 1999 (5) SC C 740: 1999 (4) JT 537]

174. Police to inquire and report on suicide, *etc*

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in

the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate

(3) When—

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate

175. Power to summon persons

(1) A police officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which have a tendency to expose him to a criminal charge or to a forfeiture

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate's Court

176. Inquiry by Magistrate into cause of death -

(1) When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry

Explanation—In this section, the expression "relative" means parents, children brothers, sisters and spouse

CHAPTER XIII - JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS

177. Ordinary place of inquiry and trial—Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed

178. Place of inquiry or trial

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas

Comments

Section 178 (b) does not envisage a position in which one ingredient of the offence is committed at one place and other is committed in another place but it speaks of cases when an offence is committed partly in one area and partly in another area, that the Courts having jurisdiction in both the areas have got territorial jurisdiction to take cognizance of an offence; *Pradipta Basu Roy Chowdhury* v *Smt Babita Basu Chowdhury,* (1997) 2 Crimes 397 (Cal)

179. Offence triable where act is done or consequence ensues -

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued

180. Place of trial where act is an offence by reason of relation to other offence -

When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done

181. Place of trial in case of certain offences -

(1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found

(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained

(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person

(5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property

182. Offences committed by letters, *etc* -

(1) Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person

(2) Any offence punishable under section 495 or section 494 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage , or the wife by first marriage has taken up permanent residence after the commission of offence

183. Offence committed on journey or voyage -

When an offence is committed, whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage

184. Place of trial for offences triable together -

Where—

(a) the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219, section 220 or section 221, or

(b) the offence or offences committed by several persons are such that they may be charged with, and tried together by virtue of the provisions of section 223, the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences

185. Power to order cases to be tried in different sessions divisions -

Notwithstanding anything contained in the preceding provisions of this Chapter, the State Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Provided that such direction is not repugnant to any direction previously issued by the High Court or the Supreme Court under the Constitution, or under this Code or any other law for the time being in force

186. High Court to decide, in case of doubt, district where inquiry or trial shall take place

Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided—

(a) if the Courts are subordinate to the same High Court, by that High Court;

(b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced, and thereupon all other proceedings in respect of that offence shall be discontinued

187. Power to issue summons or warrant for offence committed beyond local jurisdiction

(1) When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of sections 177 to 185 (both inclusive), or any other law for the time being in force, be inquired into or tried within such jurisdiction but is under some law for the time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is not punishable with death or imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond with or without sureties for his appearance before the Magistrate having such jurisdiction

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court

188. Offence committed outside India

When an offence is committed outside India—

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government

189. Receipt of evidence relating to offences committed outside India –

When any offence alleged to have been committed in a territory outside India is being inquired into or tried under the provisions of section 188, the Central Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before a judicial officer in or for that territory or before a diplomatic or consular representative of India in or for that territory shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate

CHAPTER XIV - CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS

190. Cognizance of offences by Magistrates -

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try

State amendment

Punjab and Union Territory of Chandigarh:

After section 190 insert the following section, namely:—

191. Transfer on application of the accused –

When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf

STATE amendments

Punjab:—In section 191, for the words "clause (c) of sub-section (1) of section 190" substitute the words "section 190A" and for the words "Magistrate" and "Chief Judicial Magistrate" substitute the words "Executive Magistrate" and "District Magistrate" wherever occurring

Union Territory of Chandigarh:—In section 191, for the words "clause (c) of sub-section (1) of section 191", substitute the words "section 191A" and for the words "Magistrate" and "Chief Judicial Magistrate" The words "Executive Magistrate" and "District Magistrate" respectively
[*Vide* Punjab Act 22 of 1983 (wef 27-6-1983)

192. Making over of cases to Magistrates –

(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial

State amendments

Punjab:

In section 192, for the words, "Chief Judicial Magistrate" and the words "Magistrate of the First Class" or Magistrate" wherever they occur, substitute the words "District Magistrate" and "Executive Magistrate" respectively

Union Territory of Chandigarh:

Section 192 shall be so read as if for the words "Chief Judicial Magistrate", and the words "Magistrate of the first class", or "Magistrate", wherever occurring, the words "District Magistrate" and "Executive Magistrate", respectively were substituted
Vide Punjab Act 22 of 1983 (wef 27-6-1983)

193. Cognizance of offences by Courts of Session

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code

Comments

A Court of Session to which a case is committed for trial by Magistrate can, without itself recording evidence, summon a person not named in Police Report under section 173 CrP (though named in FIR) to stand trial along with those already named therein such power is under section 193 of the Code and not under section 319 of the Code;" *Kishun Singh* v *State of Bihar*, 1993(1) Crimes 495 (SC)

194. Additional and Assistant Sessions Judges to try cases made over to them –

An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence –

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive)of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed

Comments

(i) As the document alleged to have been forged was not produced in the Court the provisions of section 195(1)(b)(ii) have no application; *Sushil Kumar* v *State of Haryana*, (1988) Cr LJ 427 : AIR 1988 SC 419

(ii) Section 195(3) provides a pre-condition for taking cognizance of offence under section 193 of the Code; *Chandrapal Singh* v *Maharaj Singh*, AIR 1962 SC 1238 : (1982) Cr LJ 1731: (1982) 1 SCC 466: 1982 SCC (Cr) 249: 1982 Cr LR (SC) 126

(iii) Clubbing of other cognizable offences would not be permissible to evade the provisions of section 195 of the Code; *Barappa* v *State of Karnataka*, (1997) 2 Crimes 575 (Kant)

(iii) Section 340 Cr P prescribed the procedure as to how a complaint may be preferred under section 195 Cr P while under section 195 Cr P it is open to the Court before which the offence was committed to prefer a complaint for the prosecution of the offender Provisions under section 195 Cr P are mandatory and no Court can take cognizance of offences referred to therein; *MS Ahlawat* v *State of Haryana*, AIR 2000 SC 168: 2000 Cr LJ 388 (SC)

196. Prosecution for offences against the State and for criminal conspiracy to commit such offence

(1) No Court shall take cognizance of—

(a) any offence punishable under Chapter VI or under section 153A, section 295A or sub-section (1) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government

(1A) No Court shall take cognizance of —

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary

(3) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155

197. Prosecution of Judges and public servants –

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union whole acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted

(3A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held

STATE AMENDMENTS

Assam:

For sub-section (3) of section 197, the following sub-section shall be substituted, namely:—
"(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply—

(a) to such class or category of the members of the Forces charged with the maintenance of public order, or

(b) to such class or category of other public servants [not being persons to whom the provisions of sub-section (1) or sub-section (2) apply charged with the maintenance of public order, as may be specified in the notification wherever they may be serving, and thereupon the provisions of sub-section (2) shall apply as if for the expression Central Government occurring therein, the expression State Government were substituted"
[*Vide* President's Act 3 of 1980 (wef 5-6-1980)

Maharashtra:

After section 197, the following section shall be inserted, namely:—

198. Prosecution for offences against marriage

(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that—

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's, brother or sister , with the leave of the Court, by any other person related to her by blood, marriage or adoption

(2) For the purpose of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a person who has not been appointed or declared by a competent authority to be the guardian of the person of the minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard

(4) The authorisation referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding Officer, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband

(5) Any document purporting to be such an authorisation and complying with the provisions of sub-section (4), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence

(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code (45 of 1860), where such offence consists of sexual inter-course by a man with his own wife, the wife being under fifteen years of age, if more than one year has elapsed from the date of the commission of the offence

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence

198A. Prosecution of offences under section 498A of the Indian Penal Code

No Court shall take cognizance of an offence punishable under section 498A of the Indian Penal Code (45 of 1860) except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption

199. Prosecution for defamation -

(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Government of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint

CHAPTER XV - COMPLAINTS TO MAGISTRATES

200. Examination of complainant -

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them

201. Procedure by Magistrate not competent to take cognizance of the case -

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall,—

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court

202. Postponement of issue of process

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant

203. Dismissal of complaint -

If, after considering the statements on oath (if any) of the complainant and of the wit nesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing

Comments

An order of dismissal under section 203 of the Code is no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances; *Mohinder Singh* v *State* (*Chandigarh Admn*), (1997) 3 Crimes 142 (P&H)

CHAPTER XVI - COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

204. Issue of process –

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint

(5) Nothing in this section shall be deemed to affect the provisions of section 87

Comments

(i) A summoning order passed by Magistrate under section 204 of the Code cannot necessarily be treated to be an interlocutory order thereby completely barring a revision against the same in view of the bar under section 397 (2) of the Code The test to examine whether such an order is an interlocutory order or not is that if the decision against such an order finally terminates the criminal proceedings, it would not be treated as an interlocutory order On the other hand if decision given either way would still allow the proceedings to go on then the order would not be a final order but an interlocutory order and then a revision against such an order would be barred under section 397(2) of the Code; *Umakant Panday* v *A JM*, (1997) 2 Crimes 27 (All)

(ii) Even after issue of process in summons case the accused can plead of absence of any triable case against him and the Magistrate, on being satisfied on reconsideration of the complaint, has discretionary power to order, dropping of the proceedings against the accused; *Awadhesh Prasad Singh* alias *Awadhesh Prasad Sharma v State of Bihar,* (1997) 3 Crimes 70 (Pat)

(iii) Accused are responsible for the conduct of business the necessary requirement issue process against the company is fulfilled Rejection of recalling of process issued against petitioner is proper; *Orient Syntex Ltd* v *Besant Capital Tech Ltd*, 2000 Cr LJ 210 (Bom)

205. Magistrate may dispense with personal attendance of accused -

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided

206. Special summons in cases of petty offence –

(1) If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 260, the Magistrate shall, except where he is, for reasons to be recorded in writing of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing, the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader:

Provided that the amount of the fine specified in such summons shall not exceed one hundred rupees

(2) For the purposes of this section, "petty offence" means any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939[1], or under any other law which provides for convicting the accused person in his absence on a plea of guilty

(3) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 or any offence punishable with imprisonment for a term not exceeding three months, or with fine or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice

207. Supply to the accused of copy of police report and other documents

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session -

Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

(i) the statements recorded under section 200 or section 202, or all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under section 161 or section 164;

(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court

209. Commitment of case to Court of Session when offence is triable exclusively by it -

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session

STATE AMENDMENTS

Gujarat:

In section 209 for clause (a), the following clause shall be substituted, namely:—
"(a) Commit the case, after complying with the provisions of section 207 or section 208, as the case may be, to the Court of Session and, subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made"
Vide President's Act 30 of 1976, sec 2 (wef 7-7-1976)

Uttar Pradesh:
In section 209 for clauses (a) and (b), the following clauses shall be substituted and be deemed always to have been substituted, namely:—

"(a) as soon as may be after complying with the provisions of section 207, commit the case to Court of Session;

(b) subject to the provisions of the Code relating to bail, remand the accused to the custody until commitment of the case under clause (a) and thereafter during and until the conclusion of the trial"
[*Vide* UP Act 16 of 1976, sec 6

Comments

(i) It is well settled that the Magistrate is forbidden to apply his mind to the merit of the matter and determine as to whether any accused need be added or subtracted to face trial before the Court of session; *Bhola Rai* v *State of Bihar,* (1997) 3 Crimes 48 (Pat)

(ii) The Magistrate has no option but to commit the case to the Court of Session only in respect of those persons who have been chargesheeted; *Bhola Rai* v *State of Bihar*, (1997) 3 Crimes 48 (Pat)

(iii) When the offence made out under section 376 triable by Session Court discharge of accused under section 209 Cr P illegal; *Kavita (Smt)* v *State*, 2000 Cr LJ 315 (Del)

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code

Comments

Filing of complaint case and FIR lodged simultaneously Magistrate empowered to stay complaint call for report on police officer and tried together was proper; *Birendra Kumar* v *State of Bihar*, 2000 Cr LJ 145 (Pat)

CHAPTER XVII - THE CHARGE

A—Form of charges

211. Contents of charge –

(1) Every charge under this Code shall state the offence with which the accused is charged

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only

(3) If the law which creates the offence does not give it any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case

(6) The charge shall be written in the language of the Court

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact date and place of the previous, conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed

Illustrations

(a) *A* is charged with the murder of *B* This is equivalent to a statement that *A's* act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code (45 of 1860); that it did not fall within any of the general exceptions of the said Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it

(b) *A* is charged under section 326 of the Indian Penal Code (45 of 1860) with voluntarily causing grievous hurt to *B* by means of an instrument for shooting This is equivalent to a statement that the case was not provided for by section 335 of the said Code, and that the general exceptions did not apply to it

(c) *A* is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definition, of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge

(d) *A* is charged under section 184 of the Indian Penal Code (45 of 1860) with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant The charge should be in those words

212. Particulars as to time, place and person -

(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other moveable property, it shall be sufficient to specify the gross sum or, as the case may be, described the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been

committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:

Provided that the time included between the first and last of such dates shall not exceed one year

213. When manner of committing offence must be stated -

When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner is which the alleged offence was committed as will be sufficient for that purpose

Illustrations

(a) *A* is accused of the theft of a certain article at a certain time and place The charge need not set out the manner in which the theft was effected

(b) *A* is accused of cheating *B* at a given time and place The charge must be set out the manner in which *A* cheated *B*

(c) *A* is accused of giving false evidence at a given time and place The charge must set out that portion of the evidence given by *A* which is alleged to be false

(d) *A* is accused of obstructing *B*, a public servant, in the discharge of his public functions at a given time and place The charge must set out the manner in which *A* obstructed *B* in the discharge of his functions

(e) *A* is accused of the murder of *B* at a given time and place The charge need not state the manner in which *A* murdered *B*

(f) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment The charge must set out the disobedience charge and the law infringed

214. Words in charge taken in sense of law under which offence is punishable -

In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable

215. Effect of errors –

No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice

Illustrations

(a) *A* is charged under section 242 of the Indian Penal Code (45 of 1860), with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word " fraudulently" being omitted in the charge Unless it appears that *A* was in fact misled by this omission, the error shall not be regarded as material

(b) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly *A* defends himself, calls witnesses and gives his own account of the transaction The Court may infer from this that the omission to set out the manner of the cheating is not material

(c) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error

(d) *A* is charged with the murder of Khoda Baksh on the 21st January, 1882 In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882 *A* was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial

(e) *A* was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882 When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh The witnesses present in his defence were witnesses in the case of Haidar Baksh The Court may infer from this that *A* was misled, and that the error was material

216. Court may alter charge

(1) Any Court may alter or add to any charge at any time before judgment is pronounced

(2) Every such alteration or addition shall be read and explained to the accused

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded

217. Recall of witnesses when charge altered -

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed—

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material

B—Joinder of Charges

218. Separate charges for distinct offences -

(1) For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223

Illustration

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion *A* must be separately charged and separately tried for the theft and causing grievous hurt

219. Three offences of same kind within year may be charged together –

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local laws:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence

220. Trial for more than one offence -

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860)

Illustrations to sub-section (1)

(a) *A* rescues *B* a person in lawful custody, and in so doing causes grievous hurt to *C*, a constable, in whose custody *B* was, *A* may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code (45 of 1860)

(b) *A* commits house-breaking by day with intent to commit adultery, and commits in the house so entered, adultery with *B*'s wife A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code (45 of 1860)

(c) *A* entices *B*, the wife of *C*, away form *C*, with intent to commit adultery with *B*, and then commits adultery with her *A* may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code (45 of 1860)

(d) *A* has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code (45 of 1860) *A* may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code (45 of 1860)

(e) With intent to cause injury to *B, A* institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses *B* of having committed an offence, knowing that there is no just or lawful ground for such charge *A* may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code (45 of 1860)

(f) *A* with intent to cause injury to *B*, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge On the trial, *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence *A* may be separately charged with and convicted of, offences under sections 211 and 194 of the Indian Penal Code (45 of 1860)

(g) *A* with six others, commits the offences, of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code (45 of 1860)

(h) *A* threatens *B, C* and *D* at the same time with injury to their persons with intent to cause alarm to them *A* may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code (45 of 1860)

The separate charges referred to in *illustrations* (a) to (h) respectively, may be tried at the same time
Illustrations to sub-section (3)

(i) *A* wrongfully strikes *B* with a cane *A* may be separately charged with and convicted of, offences under sections 352 and 323 of the Indian Penal Code (45 of 1860)

(j) Several stolen sacks of corn are made over to *A* and *B*, who knew they are stolen property, for the purpose of concealing them *A* and *B* thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit *A* and *B* may be separately charged with and convicted of, offences under sections 411 and 414 of the Indian Penal Code (45 of 1860)
(k) *A* exposes her child with the knowledge that she is thereby likely to cause its dea

221. Where it is doubtful what offence has been committed –

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it

Illustrations

(a) *A* is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property or criminal breach of trust or cheating

(b) In the case mentioned, *A* is only charged with theft It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence

(c) *A* states on oath before the Magistrate that he saw *B* hit *C* with a club Before the Sessions Court *A* states on oath that *B* never hit *C A* may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot to be proved which of these contradictory statements was false

222. When offence proved included in offence charged

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied

Illustrations

(a) *A* is charged under section 407 of the Indian Penal Code (45 of 1860) with criminal breach of trust in respect of property entrusted to him as a carrier It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier He may be convicted of criminal breach of trust under the said section 406

(b) *A* is charged under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt He proves that he acted on grave and sudden provocation He may be convicted under section 335 of that Code

Comments

(i) A Court is entitled to convict a person of an offence which is minor in comparison to the one for which he is tried; *Sangarabonia Sreenu* v *State of Andhra Pradesh*, (1997) 4 Supreme 214

(ii) If an accused is charged of a major offence but is not found guilty thereunder, he can be convicted of minor offence, if the facts established indicate that such minor offence has been committed; *State of Himachal Pradesh* v *Tara Dutta*, AIR 2000 SC 297

223. What persons may be charged jointly –

The following persons may be charged and tried together, namely:—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

Comments

(i) Where there is a communality of purpose or design when there is continuity of action then all those persons involved can be accused of the same or different offences committed in course of same transaction If such two diametrically opposite versions are put to joint trial the confusion which can cause in the trial could be incalcullable Permission to joint trial illegal; *Balbir* v *State of Haryana*, AIR 2000 SC 11: 2000 Cr LJ 169 (SC)

(ii) The two trials were separately conducted one after the other by the same Court before the same judge and judgment in both cases were separately pronounced on the same day No doubt the session judge should take care of that he would confine his judgment in one case only to the evidence adduced in the case The public prosecutor who prosecuted one case should avoid prosecution in other case Permission for joint trial not legal; *Balbir* v *State of Haryana*, AIR 2000 SC 11: 2000 Cr LJ 169 (SC)

224. Withdrawal of remaining charges on conviction on one of several charges-

When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent, of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges and such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn

CHAPTER XVIII -TRIAL BEFORE A COURT OF SESSION

225. Trial to be conducted by Public Prosecutor -

In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor

226. Opening case for prosecution –

When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused

227. Discharge –

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing

Comments

The order of discharge should be supported by reasons; *Sunil Kumar Jha* alias *Bittu Jha* v *State of Bihar*, (1997) 2 Crimes 131 (Pat)

228. Framing of charge -

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

> (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;
>
> (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried

STATE AMENDMENTS

Karnataka:

In clause (a), of sub-section (1), for the words "to the Chief Judicial Magistrate and hereupon the Chief Judicial Magistrate" the words " to the Chief Judicial Magistrate or to any Judicial Magistrate competent to try the case and thereupon the Chief Judicial Magistrate or such other Judicial Magistrate to whom the case may have been transferred" shall be substituted
Vide Karnataka Act 22 of 1994, sec 2 (wef 18-5-1994)

West Bengal:

In clause (a) of sub-section (1) of section 228, for the words "to the Chief Judicial Magistrate" and thereupon the Chief Judicial Magistrate" the words "to the Chief Judicial Magistrate or to any Judicial Magistrate competent to try the case, and thereupon the Chief Judicial Magistrate or such other Judicial Magistrate to whom the case may have been transferred" shall be substituted [*Vide* WB Act 63 of 1978 (wef 1-6-1979)

Comments

(i) The responsibility of framing the charge is that of the Court and it has to judicially consider the question of doing so Without full adverting to the material on the record it must not blindly adopt the decision of the prosecution; *Sunil Kumar Jha* alias *Bittu Jha* v *State of Bihar,* (1997) 2 Crimes 131 (Pat)

(ii) The materials, other than those produced by the prosecution, can also be looked into and should be considered at the time of framing of charge, to find out whether a *prima facie* case against the accused is made out or not; *Madho Singh* v *State of Rajasthan,* (1997) 2 Crimes 358 (Raj)

229. Conviction on plea of guilty –

If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

230. Date for prosecution evidence -

If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

231. Evidence for prosecution -

(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

232. Acquittal –

If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal.

Comments

Once a co-accused has been discharged or acquitted, he ceases to be a co-accused and there is no impediment to summon him as a witness. He can be a witness for the prosecution as well as for the defence; *Sarbeswar Panda* v. *State of Orissa*, (1997) 2 Crimes 534 (Ori).

233. Entering upon defence -

(1) Where the accused is not acquitted under section 232 he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

234. Arguments -

When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply:

Provided that where any point of law is raised by the accused or his pleader, the prosecution may, with the permission of the Judge, make his submissions with regard to such point of law.

235. Judgment of acquittal or conviction -

(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law.

Comments

(i) By virtue of section 235 (2) conviction and sentence cannot be passed on the same day; *Matloob* v. *State (Delhi)*, (1997) 3 Crimes 98 (Del).

(ii) When accused has been sentenced to undergo life imprisonment it is held to be minimum sentence does not require to give opportunity of hearing; *State of Gujarat* v. *Gandabhai S/o. Govind Bhai*, 2000 Cr LJ 92 (Guj).

236. Previous conviction -

In a case where a previous conviction is charged under the provisions of sub-section (7) of section 211, and the accused does not admit that he has been previously convicted as alleged in the charge, the Judge may, after he has convicted the said accused under section 229 or section 235, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Judge nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 229 or section 235.

237. Procedure in cases instituted under section 199 (2) -

(1) A Court of Session taking cognizance of an offence under sub-section (2) of section 199 shall try the case in accordance with the procedure for the trial of warrant-cases instituted otherwise than on a police report before a Court of Magistrate:

Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.

(2) Every trial under this section shall be held *in camera* if either party thereto so desires or if the Court thinks fit so to do.

(3) If, in any such case, the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the accusation against them or any of them, it may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor of a State or the Administrator of a Union Territory) to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more than one.

(4) The Court shall record and consider any cause which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the accusation, it may, for reasons to be recorded, make an order that compensation to such amount not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(5) Compensation awarded under sub-section (4) shall be recovered as if it were a fine imposed by a Magistrate.

(6) No person who has been directed to pay compensation under sub-section (4) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this section:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) The person who has been ordered under sub-section (4) to pay compensation may appeal from the order, in so far as it relates to the payment of compensation, to the High Court.

(8) When an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed or, if an appeal is presented, before the appeal has been decided.

CHAPTER XIX - TRIAL OF WARRANT-CASES BY MAGISTRATES

A—Cases instituted on a police report

238. Compliance with section 207 -

When in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207.

239. When accused shall be discharged -

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge -

(1) If, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

241. Conviction on plea of guilty -

If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

242. Evidence for prosecution -

(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241 the Magistrate shall fix a date for the examination of witnesses.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

243. Evidence for defence -

(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

B - Cases instituted otherwise than on police report.

244. Evidence for prosecution -

(1) When, in any warrant-case instituted otherwise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

245. When accused shall be discharged -

(1) If, upon taking all the evidence referred to in section 244 the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

STATE AMENDMENT

West Bengal:

In section 245, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) If the evidence referred to in section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused."
[*Vide* W.B. Act 24 of 1968 sec. 5.

246. Procedure where accused is not discharged -

(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3) he shall be required to state, at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any), they shall also be discharged.

247. Evidence for defence -

The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of section 243 shall apply to the case.

C—Conclusion of trial

248. Acquittal or conviction -

(1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

(3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2).

249. Absence of complainant -

When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

250. Compensation for accusation without reasonable cause -

(1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under sub-section (2) further order that, in default of payment, the person ordered to pay such compensation shall under go simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned under sub-section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order as if such complainant or informant had been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons-cases as well as to warrant cases.

CHAPTER XX - TRIAL OF SUMMONS-CASES BY MAGISTRATES

251. Substance of accusation to be stated -

When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

252. Conviction on plea of guilty -
If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion convict him thereon.

253. Conviction on plea of guilty in absence of accused in petty cases -

(1) Where a summons has been issued under section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.

(2) The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the pleader and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.

254. Procedure when not convicted -

(1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) A Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

255. Acquittal or conviction -

(1) If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilt, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3) A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter which form the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

256. Non-appearance or death of complainant -

(1) If the summons has been issued on complaint and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

Comments

There is no denying that the dismissal of the complaint in default under section 256 entails the acquittal of the accused. Once an accused has been acquitted of the offence, the law provides a remedy by way of an appeal against the order of acquittal under section 378 (4) of the Code; *H.P. Agro Industries Corpn. Ltd.* v. *M.P.S. Chawla*, *(*1997) 2 Crimes 591 (H&P).

257. Withdrawal of complaint -

If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

258. Power to stop proceedings in certain cases -

In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case release, the accused, and such release shall have the effect of discharge.

259. Power of Court to convert summons-cases into warrant cases -

When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may recall any witness who may have been examined.

CHAPTER XXI - SUMMARY TRIALS

260. Power to try summarily -

(1) Notwithstanding anything contained in this Code—

(a) any Chief Judicial Magistrate;

(b) any Metropolitan Magistrate;

(c) any Magistrate of the first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:—

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed two hundred rupees;

(iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed two hundred rupees;

(iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860) where the value of such property does not exceed two hundred rupees;

(v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);

(vi) insult with intent to provoke a breach of the peace, under section 504 and criminal intimidation, under section 506 of the Indian Penal Code (45 of 1860);

(vii) abetment of any of the foregoing offences;

(viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;

(ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1871(1 of 1871).

(2) When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear, the case in the manner provided by this Code.

261. Summary trial by Magistrate of the second class -

The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second class power to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence.

262. Procedure for summary trials -

(1) In trial under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

263. Record in summary trials -

In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely:—

(a) the serial number of the case;

(b) the date of the commission of the offence;

(c) the date of the report of complaint;

(d) the name of the complainant (if any);

(e) the name, parentage and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause (iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed;

(g) the plea of the accused and his examination (if any);

(h) the finding;

(i) the sentence or other final order;

(j) the date on which proceedings terminated.

264. Judgment in cases tried summarily -

In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

265. Language of record and judgment -

(1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

CHAPTER XXII - ATTENDANCE OF PERSONS CONFINED OR DETAINED IN PRISONS

266. Definitions -

In this Chapter,—

(a) "**detained** " includes detained under any law providing for preventive detention;

(b) "**prison**" includes,—

(i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;

(ii) any reformatory, Borstal institution or other institution of a like nature.

267. Power to require attendance of prisoners -

(1) Wherever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court.—

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or as the case may be, for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

268. Power of State Government to exclude certain persons from operation of section 267 -

(1) The State Government may, at any time having regard to the matters specified in sub-section (2), by general of special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained and thereupon, so long as the order remains to force, no order made under section 267, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-section (1), the State Government shall have regard to the following matters, namely:—

(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;

(c) the public interest, generally.

269. Officer in charge of prison to abstain from carrying out order in certain contingencies.

Where the person in respect of whom an order is made under section 267, —

(a) is by reason of sickness or infirmity unfit to be removed from the prison; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government under section 268 applies, the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining:

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometers distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).

270. Prisoner to be brought to Court in custody.

Subject to the provisions of section 269, the officer in charge of the prison shall, upon delivery of an order made under sub-section (1) of section 267 and duly countersigned, where necessary, under sub-section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he was confined or detained.

271. Power to issue commission for examination of witness in prison.

The provisions of this Chapter shall be without prejudice to the power of the Court to issue, under section 284, a commission for the examination, as a witness, of any person confined or detained in a prison; and the provisions of Part B of Chapter XXIII shall apply in relation to the examination on commission of any such person in the prison as they apply in relation to the examination on commission of any other person.

CHAPTER XXIII - EVIDENCE IN INQUIRIES AND TRIALS

A—Mode of taking and recording evidence

272. Language of Courts -

The State Government may determine what shall be, for purposes of this Code, the language of each Court within the State other than the High Court.

273. Evidence to be taken in presence of accused.

Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.

Explanation— In this section "accused" "includes a person in relation to whom any proceeding under Chapter Viii has been commenced under this Code.

274. Record in summons-cases and inquiries.

(1) In all summons-cases tried before a Magistrate, in all inquiries under sections 145 to 148 (both inclusive), and in all proceedings under section 446 otherwise than in the course of a trial, the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of the evidence in the language of the Court:

Provided that if the Magistrate is unable to make such memorandum himself, he shall after recording the reason of his inability, cause such memorandum to be made in writing or from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the record.

275. Record in warrant-cases.

(1) In all warrant-cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open Court or, where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

(2) Where the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub-section (1).

(3) Such evidence shall ordinarily be taken down in the form of a narrative, by the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(4) The evidence so taken down shall be signed by the Magistrate and shall form part of the record.

277. Language of record of evidence.

In every case where evidence is taken down under section 275 or section 276,—

(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or Presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or Presiding Judge, and shall form part of the record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

278. Procedure in regard to such evidence when completed.

(1) As the evidence of each witness taken under section 275 or section 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.

(3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands.

Comments

Object of section 278 is not intended to permit a witness to resile from his statement in the name of correction; *Mir Mohd. Omar* v. *State of West Bengal,* (1989) Cr LJ 2070: AIR 1989 SC 1875.

279. Interpretation of evidence to accused or his pleader.

(1) Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

280. Remarks respecting demeanour of witness.

When a Presiding Judge or magistrate has recorded the evidence of a witnesses, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

281. Record of examination of accused.

(1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.

(2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the Presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

(3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable in the language of the Court.

(4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(5) It shall thereafter be signed by the accused and by the Magistrate or Presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

282. Interpreter to be bound to interpret truthfully.

When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

283. Record in High Court.

Every High Court may, by general rule, prescribe the manner in which the evidence of witnesses and the examination of the accused shall be taken down in cases coming before it; and such evidence and examination shall be taken down in accordance with such rule.

B—Commissions for the examination of witnesses

284. When attendance of witness may be dispensed with and commission issued.

(1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court of Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter:

Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union Territory as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.

(2) The Court may, when issuing a commission for the examination of a witness for the prosecution direct that such amount as the Court considers reasonable to meet the expenses of the accused including the pleader's fees, be paid by the prosecution.

285. Commission to whom to be issued.

(1) If the witness is within the territories to which this Code extends, the commission shall be directed to the Chief Metropolitan Magistrate or Chief Judicial Magistrate, as the case may be, within whose local jurisdiction the witness is to be found.

(2) If the witness is in India, but in a State or an area to which this Code does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission as the Central Government may, by notification prescribe in this behalf.

286. Execution of commissions.

Upon receipt of the commission, the Chief Metropolitan Magistrate of Chief Judicial Magistrate, or such Metropolitan or Judicial Magistrate as he may appoint in this behalf, shall summon the witness before him or proceed to the place where the witness is, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

287. Parties may examine witnesses.

(1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Court or Magistrate directing the commission may think relevant to the issue, and it shall be lawful for the Magistrate, Court or officer to whom the Commission is directed, or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate, Court or officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

288. Return of commission.

(1) After any commission issued under section 284 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court or Magistrate issuing the commission; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872 (1 of 1872) may also be received in evidence at any subsequent stage of the case before another Court.

289. Adjournment of proceeding.

In every case in which a commission is issued under section 284, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

290. Execution of foreign commissions.

(1) The provisions of section 286 and so much of section 287 and section 288 as relate to the execution of a commission and its return shall apply in respect of commissions issued by any of the Courts, Judges or Magistrates hereinafter mentioned as they apply to commissions issued under section 284.

(2) The Courts, Judges and Magistrates referred to in sub-section (1) are—

(a) any such Court, Judge or Magistrate exercising jurisdiction within an area in India to which this Code does not extend, as the Central Government may, by notification, specify in this behalf;

(b) any Court, Judge or Magistrate exercising jurisdiction in any such country or place outside India, as the Central Government may, by notification, specify in this behalf, and having authority under the law in force in that country or place, to issue commissions for the examination of witnesses in relation to criminal matters.

291. Deposition of medical witness.

(1) The deposition of a civil surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under this Chapter, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject-matter of his deposition.

292. Evidence of officers of the Mint.

(1) Any document purporting to be a report under the hand of any such gazetted officer of the Mint or of the India Security Press (including the office of the Controller of Stamps and Stationery) as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code, although such officer is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine any such officer as to the subject-matter of this report:

Provided that no such officer shall be summoned to produce any records on which the report is based.

(3) Without prejudice to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) no such officer shall, except with the permission of the master of the Mint or the India Security Press or the Controller of Stamps and Stationery, as the case may be, be permitted—

(a) to give any evidence derived from any unpublished official records on which the report is based; or

(b) to disclose the nature or particulars of any test applied by him in the course of the examination of the matter or thing.

293. Reports of certain Government scientific experts.

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:—

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State forensic Science Laboratory;

(f) the Serologist to the Government.

Comments

The Court has to accept documents issued by any of the six officers who are mentioned in section 293 as valid evidence without examining the author thereof: *Visakha Agro Chemicals (P) Ltd.* v. *Fertiliser Inspector-cum-Assistant Director of Agriculture (Regular)*, (1997) 2 Crimes 648 (AP).

294. No formal proof of certain documents.

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

295. Affidavit in proof of conduct of public servants.

When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

296. Evidence of formal character on affidavit.

(1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

297. Authorities before whom affidavits may be sworn.

(1) Affidavits to be used before any Court under this Code may be sworn or affirmed before—

(a) any Judge or any Judicial or Executive Magistrate, or

(b) any Commissioner of Oaths appointed by a High Court or Court of Session, or

(c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.

298. Previous conviction of acquittal how proved -

In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any, law for the time being in force,—

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was held, to be a copy of the sentence or order, or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was undergone, or by production of the warrant of commitment under which the punishment was suffered. together with, in each of such cases evidence as to the identity of the accused person with the person so convicted or acquitted.

299. Record of evidence in absence of accused.

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.

STATE AMENDMENT

Uttar Pradesh:

In section 299 in sub-section (1) for the words "competent to try such person" the words "competent to try such person or to commit him for trial" shall be substituted.
[*Vide* U.P. Act 6 of 1976, sec. 7 (w.e.f. 28-11-1975).

CHAPTER XXIV - GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

300. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section

Illustrations

(a) *A* is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or upon the same facts, with theft simply, or with criminal breach of trust.

(b) *A* is tried for causing grievous hurt and convicted. The person injured afterwards dies. *A* may be tried again for culpable homicide.

(c) *A* is charged before the Court of Session and convicted of the culpable homicide of *B*. *A* may not afterwards be tried on the same facts for the murder of *B*.

(d) *A* is charged by a Magistrate of the first class with, and convicted by him of voluntarily causing hurt to *B*. *A* may not afterwards be tried for voluntarily causing grievous hurt to *B* on the same facts, unless the case comes within sub-section (3) of this section.

(e) *A* is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of *B*. *A* may subsequently be charged with, and tried for, robbery on the same facts.

(f) *A, B* and *C* are charged by a magistrate of the first class with, and convicted by him of, robbing *D*. *A, B* and *C* may afterwards be charged with, and tried for, dacoity on the same facts.

301. Appearance by public prosecutors.

(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

STATE AMENDMENT

West Bengal:
For section 301 (1), the following shall be substituted:—
"(1) (a) The Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(b) The Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry or trial."
[*Vide* W.B. Act 26 of 1990.

302. Permission to conduct prosecution.

(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate- General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

303. Right of person against whom proceedings are instituted to be defended.

Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

304. Legal aid to accused at State expense in certain cases.

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government make rule providing for—

(a) the mode of selecting pleaders for defence under sub-section (2);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fee payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before the Courts of Session.

Comments

The entitlement to free legal aid is not dependent on the accused making an application to that effect and the Court is obliged to inform the accused of his right to obtain free legal aid; *Matloob* v. *State (Delhi Admn.*), (1997) 3 Crimes 989 (Del).

305. Procedure when corporation or registered society is an accused.

(1) In this section, "corporation" means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court.

306. Tender of pardon to accomplice.

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any, stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952).

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record—

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)—

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case.—

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

Comments

(i) Once an accused is granted pardon under section 306 he ceases to be an accused and becomes a witness for the prosecution; *State (Delhi Admn.)* v. *Jagjit Singh*, 1989 Cr LJ 980: AIR 1989 SC 989.

(ii) Section 306 (4) clearly reveals that the person accepting a tender of pardon should be examined as a witness first in the Court of Magistrate and subsequently in the trial Court; *Murlidharan* v. *State of Tamil Nadu,* (1997) 1 Crimes 515 (Mad).

307. Power to direct tender of pardon.

At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

308. Trial of person not complying with conditions of pardon.

(1) Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 164 or by a Court under sub-section (4) of section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made, in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial the Court shall—

(a) if it is a Court of Session, before the charge is read out and explained to the accused;

(b) if it is the Court of a Magistrate before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall notwithstanding anything contained in this Code, pass judgment of acquittal.

309. Power to postpone or adjourn proceedings.

(1) In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Explanation 1 —If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2 —The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

310. Local inspection.

(1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of cost.

311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

Comments

(i) Power of Court to recall any witness or witnesses already examined or to summon any witness can be invoked even if the evidence in both sides is closed so long as the Court retains seisin of the criminal proceedings: *Mohanlal Shamji Soni* v. *Union of India*, (1981) 1 Crimes 818 (SC): (1991) Cr LJ 152 (SC).

(ii) Any person can be summoned as witness or recalled or re-examined at any stage of proceeding where essential; *Mohanlal Shamji Soni* v. *Union of India*, (1991) GLJ 1521 (SC): (1991) 1 Crimes 818 (SC).

(iii) It is crystal clear that the Court has been empowered to summon any person as a witness at any stage of inquiry, trial or other proceeding. The power is not confined to any particular class of person; *Heeralal* v. *State of Madhya Pradesh,* (1997) 2 Crimes 634 (MP).

(iv) It is settled in law if the conditions under this section are satisfied the Court can call a witness not only on the motion of either the prosecution or the defence but also it can do so on its even motion; *Heeralal* v. *State of Madhya Pradesh*, (1997) 2 Crimes 634 (MP).

(v) The discretion vested in the Court under section 311 is to be exercised judicially and not arbitrarily; *Raghunath Prasad* v. *State of Rajasthan,* (1997) 3 Crimes 86 (Raj).

312. Expenses of complainants and witnesses.

Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

313. Power to examine the accused.

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case:

Provided that in a summons-case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1)

(3) The accused shall not render himself liable to punishment by refusing to answer such question, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he had committed.

Comments

Section 313 is an important section and salutary provision which should not be slurred over; *Raman Saikia* v. *State of Assam,* (1997) 2 Crimes 555 (Gau).

314. Oral arguments and memorandum of arguments.

(1) Any party to a proceeding may, as soon as may be after the close of his evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum to the Court setting forth concisely and under distinct headings, the arguments in support of his case and every such memorandum shall form part of the record.

(2) A copy of every such memorandum shall be simultaneously furnished to the opposite party.

(3) No adjournment of the proceedings shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(4) The Court may, if it is of opinion that the oral arguments are not concise or relevant, regulate such arguments.

315. Accused person to be competent witness.

(1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:
Provided that—

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

(2) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107, or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings:

Provided that in proceedings under section 108, section 109 or section 110, the failure of such person to give evidence shall not be made the subject or any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.

Comments

It is well settled that no Court can compel the accused to give evidence unless there is compliance with section 315(1)(a), *i.e*., a request in writing by the accused; *Sarbeswar Panda* v. *State of Orissa,* (1997) 2 Crimes 534 (Ori).

316. No influence to be used to induce disclosure.

Except as provided in sections 306 and 307 no influence by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

317. Provision for inquiries and trial being held in the absence of accused in certain cases.

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

318. Procedure where accused does not understand proceedings.

If the accused, though not of unsound mind, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of a Court other than a High Court if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

Comments

In order to apply section 319 it is essential that the need to proceed against the person other than the accused, appearing to be guilty of offence, arises only on evidence recorded in the courses of any inquiry or trial; *Bhola Rai* v. *State of Bihar,* (1997) 3 Crimes 48 (Pat).

320. Compounding of offences.

(1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table.

(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table:—

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4)(a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

STATE AMENDMENT

Madhya Pradesh:

In the table below sub-section (2) of sec. 320 of the Principal Act,—
(i) in column first, second and third, before section 324 and entries relating thereto, the following sections and entries relating thereto shall be inserted, namely:—
"(1) (2) (3)
Rioting 147 The person against whom the force or violence is used at the time of committing an offence:

Provided that the accused is not charged with other offence which is not compoundable.
Rioting armed with deadly weapon 148 The person against whom the force or violence is used at the time of committing an offence:

Provided that the accused is not charged with other offence which is not compoundable
Obscene acts or use of obscene words 294 The person against whom obscene acts were done or obscene words were used.".
(ii) in column first, second and third, after section 500 and entries relating thereto, the following section and entries relating thereto shall be inserted, namely:—
"(1) (2) (3)
Criminal intimidation if Part II of The person against whom the offence of threat to be cause death section 506 Criminal Intimidation was committed."
or grievous hurt, *etc*.
[*Vide* Madhya Pradesh Act 17 of 1999 section 3 (w.e.f. 21-5-1999).

Comments

Section 320 Cr. P provides for compounding of certain offences with the permission of Court and certain others even without permission of Court, the concept of negotiated settlement in criminal cases is not permissible concept of `plea-bargaining' against public policy and under criminal justice system; *State of Uttar Pradesh* v. *Chandrika*, AIR 2000 SC 164: 2000 Cr LJ 384 (SC).

321. Withdrawal from prosecution.

The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,—

(a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required he shall be acquitted in respect of such offence or offences:

Provided that where such offence—

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

STATE AMENDMENT

Uttar Pradesh:

In section 321, after the words "in charge of a case may" the words "on the written permission of the State Government to that effect (which shall be filed in Court)" shall be inserted.
[*Vide* U.P. Act 18 of 1991, sec. 3 (w.e.f. 16-2-1991).

Comments

A Court of session to which a case is committed for trial by Magistrate can, without itself recording evidence summon a person not named in Police Report under section 173 Cr. P (though named in F.I.R.) to stand trial along with those already named therein such power is under section 193 of Cr. P and not under section 319; *Kishun Singh* v. *State of Bihar*, 1993 (1) Crimes 494 (SC).

322. Procedure in cases which Magistrate cannot dispose of.

(1) If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption—

(a) that he has no jurisdiction to try the case or commit it for trial, or

(b) that the case is one which should be tried or committed for trial by some other Magistrate in the district, or

(c) that the case should be tried by the Chief Judicial Magistrate, he shall stay the proceedings and submit the case, with a brief report explaining its nature to the Chief Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provision of Chapter XVIII shall apply to the commitment so made.

324. Trial of persons previously convicted of offences against coinage, stamp law or property.

(1) Where a person, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code (45 of 1860) with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, and the Magistrate before whom the case is pending is satisfied that there is ground for presuming that such person has committed the offence, he shall be sent for trial to the Chief Judicial Magistrate or committed to the Court of Session, unless the Magistrate is competent to try the case and is of opinion that he can himself pass and adequate sentence if the accused is convicted.

(2) When any person is sent for trial to the Chief Judicial Magistrate or committed to the Court of Session under sub-section (1) any other person accused jointly with him in the same inquiry or trial shall be similarly sent or committed, unless the Magistrate discharges such other person under section 239 or section 245, as the case may be.

325. Procedure when Magistrate can not pass sentence sufficiently severe.

(1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.

326. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

(1) Whenever any Judge or Magistrate after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge of Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witness whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under section 325.

STATE AMENDMENTS

Rajasthan:

In section 326,—

(a) in sub-section (1), for the word "Magistrate" wherever it occurs, the words" Judge or Magistrate" shall be substituted;

(b) in sub-section (2), before the words "from one Magistrate to another Magistrate" the words "from one Judge to another Judge or" shall be inserted.
[*Vide* Rajasthan Act 10 of 1977, sec. 3 (w.e.f. 3-3-1977).

Uttar Pradesh:
In section 326,—

(a) in sub-section (1), for the words " Magistrate," wherever occurring the words "Judge or Magistrate" shall be substituted;

(b) in sub-section (2), before the words "from one Magistrate to another Magistrate", the words "from one Judge to another Judge or" shall be inserted.
[*Vide* U.P. Act No. 16 of 1976, sec. 8 (w.e.f. 28-11-1975).

327. Court to be open.

(1) The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room building used by the Court.

(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376 B, section 376C or section 376D of the Indian Penal Code (45 of 1860) shall be conducted *in camera*:
Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court.

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court.

CHAPTER XXV - PROVISIONS AS TO ACCUSED PERSONS OF UNSOUND MIND

328. Procedure in case of accused being lunatic.

(1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness and shall reduce the examination to writing.

(2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.

(3) If such Magistrate is of opinion that the person referred to in sub-section (1) is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

329. Procedure in case of person of unsound mind tried before Court.

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court.

330. Release of lunatic pending investigation or trial.

(1) whenever a person is found, under section 328 or section 329, to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

331. Resumption of inquiry or trial.

(1) Whenever an inquiry or a trial is postponed under section 328 or section 329, the Magistrate or Court as the case may be, may at any time after the person concerned has ceased to be of unsound mind, resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

332. Procedure on accused appearing before Magistrate or Court.

(1) If, when the accused appears or is again brought before the Magistrate or Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall act according to the provisions or section 328 or section 329, as the case may be, and if the accused is found to be of unsound mind and consequently incapable of making his defence, shall deal with such accused in accordance with the provisions of section 330.

333. When accused appears to have been of sound mind.

When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act, which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be tried by the Court of Session, commit him for trial before the Court of Session.

334. Judgment of acquittal on ground of unsoundness of mind.

Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

335. Person acquitted on such ground to be detained in safe custody.

(1) Whenever the finding states that the accused person committed the act alleged, the magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found have constituted an offence,—

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a lunatic asylum shall be made under clause (a) of sub-section (1) otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section (1) except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4) The Magistrate or Court shall report to the State Government the action taken under sub-section (1).

336. Power of State Government to empower officer in charge to discharge.

The State Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 330 or section 335 to discharge all or any of the functions of the Inspector-General of Prisons under section 337 of section 338.

337. Procedure where lunatic prisoner is reported capable of making his defence.

If such person is detained under the provisions of sub-section (2) of section 330, and in the case of a person detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 332; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

338. Procedure where lunatic detained is declared fit to be released.

(1) If such person is detained under the provisions of sub-section (2) of section 330, or section 335 and such Inspector-General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the State Government may thereupon order him to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(2) Such Commission shall make a formal inquiry into the state of mind of such person, take such evidence as is necessary, and shall report to the State Government, which may order his release or detention as it thinks fit.

339. Delivery of lunatic to care of relative or friend.

(1) Whenever any relative or friend of any person detained under the provisions of section 330 or section 335 desires that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct;

(c) in the case of a person detained under sub-section (2) of section 330, be produced when required before such Magistrate or Court, order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in clause (b) of sub-section (1), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the magistrate or Court, and, upon such production the magistrate or Court shall proceed in accordance with the provisions of section 332, and the certificate of the inspecting officer shall be receivable as evidence.

CHAPTER XXVI - PROVISIONS AS TO OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

340. Procedure in cases mentioned in section 195.

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195.

Comments

The Court on receiving an application made under section 340 cannot straightway proceed to issue notice against whom such application is made; *Krishnappa* v. *Thoppaiah Shetty,* (1997) 2 Crimes 360 (Kar).

341. Appeal.

(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 95, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.

342. Power to order Court.

Any Court dealing with an application made to it for filing a complaint under section 340 or an appeal under section 341, shall have power to make such order as to costs as may be just.

343. Procedure of Magistrate taking cognizance.

(1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.

344. Summary procedure for trial for giving false evidence.

(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

345. Procedure in certain cases of contempt.

(1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

346. Procedure where Court considers that case should not be dealt with under section 345.

(1) If the Court in any case considers that a person accused of any of the offences referred to in section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 345 such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.

347. When Registrar or Sub-Registrar to be deemed a civil Court.

When the State Government so directs, any Registrar or any Sub-Registrar appointed under the Registration Act, 1908 (16 of 1908), shall be deemed to be a civil Court within the meaning of sections 345 and 346.

348. Discharge of offender on submission of apology.

When any Court has under section 345 adjudged an offender to punishment, or has under section 346 forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do or for any international insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court or on apology being made to its satisfaction.

349. Imprisonment or committal of person refusing to answer or produce document.

If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such question as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal he may be dealt with according to the provisions of section 345 of section 346.

350. Summary procedure for punishment for non-attendance by a witness in obedience to summons.

(1) If any witness being summoned to appear before a Criminal Court legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

351. Appeals from convictions under sections 344, 345, 349 and 350.

(1) Any person sentenced by any Court other than a High Court under section 344, section 345, section 349 or section 350 may, notwithstanding anything contained in this Code appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXIX shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of small causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any Registrar of Sub-Registrar deemed to be a civil Court by virtue of a direction issued under section 347 shall lie to the Court of Session for the sessions division within which the office of such Registrar of Sub-Registrar is situate.

352. Certain Judges and Magistrates not to try certain offences when committed before themselves.

Except as provided in sections 344, 345, 349 and 350, no Judge of a Criminal Court (other than a Judge of a High Court) or Magistrate shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such judge or magistrate in the course of a judicial proceeding.

CHAPTER XXVII - THE JUDGMENT

353. Judgment.

(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,—

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment: or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465.

Comments

High Court in revision set aside the order of acquittal on the ground that order of the Session Court is contrary to section 353 of the Act and remanded the case for fresh hearing. The Supreme Court held that interference by High Court was not justified; *Ramu & Ram Kumar* v. *Jagannath,* 1994 Cr LJ 66 (SC).

354. Language and contents of judgment.

(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,—

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860) and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with dealt or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year of more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.

Comments

All murders being terrific if all murderers are to be sentenced with death sentence, section 354 (3) will become a dead law; *Muniappan* v. *State of Tamil Nadu*, AIR 1981 SC 1221; (1981) Cr LJ 726: (1981) 3 SCC 11: 1981 SCC (Cr) 317.

355. Metropolitan Magistrate's Judgment.

Instead of recording a judgment in the manner hereinbefore provided, a Metropolitan Magistrate shall record the following particulars, namely:—

(a) the serial number of the case;

(b) the date of the commission of the offence;

(c) the name of the complainant (if any);

(d) the name of the accused person, and his parentage and residence;

(e) the offence complained of or proved;

(f) the plea of the accused and his examination (if any);

(g) the final order;

(h) the date of such order;

(i) in all cases in which an appeal lies from the final order either under section 373 or under sub-section (3) of section 374, a brief statement of the reasons for the decision.

356. Order for notifying address of previously convicted offender.

(1) When any person, having been convicted by a Court in India of an offence punishable under section 215, section 489A section 489B, section 489C or section 489D of the Indian Penal Code (45 of 1860) or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment for a term of three years or upwards, is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by any Court other than that of a Magistrate of the second class, such Court may, if it thinks fit, at the time of passing a sentence of imprisonment on such person, also order that his residence and any change of, or absence from, such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) The provisions of sub-section (1) with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences and attempts to commit them.

(3) If such conviction is set aside on appeal or otherwise such order shall become void.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) The State Government may, by notification, make rules to carry out the provisions of this section relating to the notification of residence or change of, or absence from, residence by released convicts.

(6) Such rules may provide for punishment for the breach thereof and any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.

357. Order to pay compensation.

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

STATE AMENDMENTS

Andhra Pradesh:

(i) In sub-section (1), after the words "the Court may", the expression "and where a person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes as defined in Clauses (24) and (25) of Article 366 of the Constitution of Indian except when both the accused person and the person against whom an offence is committed belong either to such castes or tribes, the Court shall," shall be inserted, and
(ii) for sub-section (3), the following sub-section shall be substituted, namely—

"(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, and where a person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes as defined in Clauses (24) and (25) of Article 366 of the Constitution of India, the Court shall, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced:

Provided that the Court may not order the accused person to pay by way of compensation any amount, if both the accused person and the person against whom an offence is committed belongs either to the Scheduled Castes or the Scheduled Tribes."
[*Vide* A.P. Act 21 of 1993 (w.e.f. 3-9-1993).

Bihar:

In sub-section (1) of section 357, the following provision shall be added, namely:—
"Provided that the person against whom an offence is committed, belongs to Scheduled Castes and to Scheduled Tribes as defined in clause (24) and clause (25) of Article 366 of the Constitution, the Court shall at the time of judgment pass order that the entire amount of fine realised or any part of it will be unutilised for the benefit of such person by way of compensation."
[*Vide* Bihar Act 9 of 1985, sec. 2 (w.e.f. 13-8-1985).

Karnataka:

(1) In sub-section (1), after the words "the Court may" the brackets, figures and words "and where the person against whom an offence is committed belongs to a Scheduled Caste or a Scheduled Tribe as defined in clauses (24) and (25) of Article 366 of the Constitution and the accused person doesn't belong to a Scheduled Caste or a Scheduled Tribe the Court shall" shall be inserted.

(2) for sub-section (3), the following sub-section shall be substituted, namely:—
"(3) When a Court imposes a sentence of which the fine does not form a part, the Court may, and where a person against whom an offence is committed belongs to a Scheduled Caste or a Scheduled Tribe as defined in clauses (24) and (25) of article 366 of the Constitution and the accused person does not belong to a Scheduled Caste or a Scheduled Tribe, the Court shall when

passing judgment order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."
[*Vide* Karnataka Act 27 of 1987, sec. 2 (w.e.f. 22-7-1987).

Madhya Pradesh:

In section 357,—

(i) In sub-section (1), for the brackets, figure and words "(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied" the brackets, figure and words "(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, and where a person against whom an offence is committed belongs to a Scheduled Caste or a Scheduled Tribe as defined in clauses (24) and (25) and of Article 366 of the Constitution except when both the accused person and the person against whom an offence is committed belong either to such Castes or Tribes, the Court shall, when passing judgment, order the whole or any part of the fine recovered to be applied—" shall be substituted; and

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—
"(3) When Court imposes a sentence, of which fine does not form a part, the Court may, and where a person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes as defined in clauses (24)
and (25) of Article 366 of the Constitution, the Court shall when passing judgment order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced:
"Provided that the Court may not order the accused person to pay by way of compensation any amount if both the accused person and the person against whom an offence is committed belong either to the Scheduled Castes or the Scheduled Tribes."
[*Vide* M.P. Act 29 of 1978 (w.e.f. 5-10-1978).

Rajasthan:

In section 357,—
(i) In sub-section (1), between the expression "the Court may" and the expression "when passing judgment" the expression "and where the person against whom an offence is committed belongs to a Scheduled Caste or a Scheduled Tribe but the accused person does not so belong, the Court shall" shall be inserted; and

(ii) in sub-section (3), between the expression "the Court may" and the expression "when passing judgment" the expression "and where the person against whom an offence is committed" belongs to a Scheduled Caste or a Scheduled Tribe but the accused person does not so belong, the Court shall", shall be inserted.
[*Vide* Rajasthan Act No. 3 of 1993, sec. 2.

Uttar Pradesh:

In section 357,—
(a) in sub-section (1), after clause (d), the following proviso shall be inserted, namely:—
"Provided that if a person who may receive compensation under clauses (b), (c) and (d) a member of the Scheduled Castes or the Scheduled Tribes and the person sentenced is not a member of such Castes or Tribes, the Court shall order the whole or any part of the fine recovered to be applied in payment of such compensation."

(b) for sub-section (3), the following sub-section shall be substituted, namely:—
"(3) When the Court imposes a sentence, of which fine does not form a part, the Court may, and where the person who has suffered the loss or injury is a member of the Scheduled Castes or the Scheduled Tribes and the person sentenced is not a member of such Castes or Tribes the Court shall, when passing judgment, order the person sentenced to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the person has been so sentenced."

(c) after sub-section (5) the following *Explanation* shall be inserted, namely:—
"*Explanation*.—For the purposes of this section the expressions `Scheduled Castes' and `Scheduled Tribes' shall have the meanings respectively assigned to them in clauses (24) and (25) of Article 366 of the Constitution."
[*Vide* U.P. Act 17 of 1992, sec. 2.

West Bengal:

(a) In sub-section (1), for the words and brackets "When a Court imposes a sentence of fine or a sentence including a (sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—" the words and brackets "When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, and where the person against whom an offence has been committed belongs to Scheduled Castes or Scheduled Tribes, except when both the accused person and the person against whom an offence has been committed belong either to Scheduled Castes or to Scheduled Tribes shall, when passing judgment order the whole or any part of the fine recovered to be applied—" shall be substituted.

(b) for sub-section (3), the following sub-section shall be substituted, namely:—
(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, and where the person against whom an offence has been committed belongs to Scheduled Castes or Scheduled Tribes, shall, when passing judgment order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced:
Provided that the Court may not order the accused person to pay by way of compensation, any amount if both the accused person and the person against whom an offence has been committed belong either to Scheduled Castes or to Scheduled Tribes."

(c) after sub-section (5), the following *Explanation* shall be inserted, namely—
"Explanation.—For the purposes of the section the expression "Scheduled Castes" and "Scheduled Tribes" shall have the meaning respectively assigned to them in clauses (24) and (25) of Article 366 of the Constitution of India".
[*Vide* W.B. Act 33 of 1985, sec. 3.

Comments

(i) Where there is no sentence of fine or where convict has been let off on probation, there can be no direction for compensation under section 357(a); *Girdhari Lal* v. *State of Punjab*, AIR 1982 SC 129: (1982) Cr LJ 1741: 1982 (1) SCC 603: 1982 SCC (Cr) 325.

(ii) The power of the Court to award compensation under section 357 is not ancillary to other sentence, but it is an addition thereto; *Arjunan* v. *State of Tamil Nadu,* (1997) 2 Crimes 447 (Mad).

(iii) The quantum of compensation may be determined by taking in account the nature of the crime, the manner in which it has been committed the justness of claim by the victim and the ability of the accused to pay; *Arjunan* v. *State of Tamil Nadu,* (1997) 2 Crime 447 (Mad).

358. Compensation to persons groundlessly arrested.

(1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground of causing such arrest, the Magistrate may award such compensation, not exceeding one hundred rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one hundred rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

359. Order to pay costs in non-cognizable cases.

(1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant, in whole or in part, the cost incurred by him in the prosecution, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days and such costs may include any expenses incurred in respect of process-fees witnesses and pleader's fees which the Court may consider reasonable.

(2) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

360. Order to release on probation of good conduct or after admonition.

(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment , training or rehabilitation of youthful offenders.

Comments

For offence under section 323 of the Indian Penal Code appellant not being sent to jail but released on probation under section 360 (1) is justified; *Om Prakash* v. *State of Madhya Pradesh,* AIR 1982 SC 783

361. Special reasons to be recorded in certain cases.

Where in any case the Court could have dealt with—

(a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or

(b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

362. Court not to alter judgment.

Save as otherwise provided by this Code or by any other law for the time being in force, no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

Comments

(i) In case of sentence of imprisonment for offence punishable under section 302, I.P, subsequent alteration of sentence under section 304, Part 1, Indian Penal Code by High Court is not proper under section 362; *Naresh* v. *State of Uttar Pradesh,* AIR 1981 SC 1385: (1981) Cr LJ 1044: 1981 SCC (Cr) 285: (1981) Cr LR (SC) 432.

(ii) Inherent power of Court not contemplated by saving provision in section 362; *Sooraj Devi* v. *Pyarelal,* AIR 1981 SC 736: (1981) Cr LJ 296: (1981) 1 SCC 500: (1981) SCC (Cr) 188: (1981) Cr LR (SC) 174.

363. Copy of judgment to be given to the accused and other persons.

(1) When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.

(2) On the application of the accused, a certified copy of the judgment, or when he so desires, a translation is his own language if practicable or in the language of the Court, shall be given to him without delay, and such copy shall, in every case where the judgment is appealable by the accused be given free of cost:

Provided that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same.

(3) The provisions of sub-section (2) shall apply in relation to an order under section 117 as they apply in relation to a judgment which is appealable by the accused.

(4) When the accused is sentenced to death by any Court and an appeal lies from such judgment as of right, the Court shall inform him of the period within which, if he wishes to appeal his appeal should be preferred.

(5) Save as otherwise provided in sub-section (2) any person affected by a judgment or order passed by a criminal Court shall, on an application made in this behalf and on payment of the prescribed charges, be given a copy of such judgment or order of any deposition or other part of the record:

Provided that the Court may, if it thinks fit for some special reason, give it to him free of cost.

(6) The High Court may, by rules provide for the grant of copies of any judgment or order of a Criminal Court to any person who is not affected by a judgment or order on payment, by such person, of such fees, and subject to such conditions, as the High Court may, by such rules provide.

STATE AMENDMENT

Karnataka:

In section 363 after the proviso to sub-section (5), the following proviso shall be inserted, namely:—
"Provided further that the State shall, on an application made in this behalf by the Prosecuting Officer, be given, free of cost, a certified copy of such judgment, order, deposition or record with the prescribed endorsement."
[*Vide* Karnataka Act 19 of 1985, sec. 2 (w.e.f. 25-6-1985).

364. Judgment when to be translated.

The original judgment shall be filed with the record of the proceedings and where the original is recorded in a language different from that of the Court and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

365. Court of Session to send copy of finding and sentence to District Magistrate.

In cases tried by the Court of Session or a Chief Judicial Magistrate, the Court or such Magistrate as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District Magistrate within whose local jurisdiction the trial was held.

367. Power to direct further inquiry to be made or additional evidence to be taken.

(1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.

(3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court.

368. Power of High Court to confirm sentence or annul conviction.

In any case submitted under section 366, the High Court—

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

369. Confirmation or new sentence to be signed by two Judges.

In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

370. Procedure in case of difference of opinion.

Where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by section 392.

371. Procedure in cases submitted to High Court for confirmation.

In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court and attested with his official signature, to the Court of Session

CHAPTER XXIX - APPEALS

372. No appeal to lie unless otherwise provided.

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

373. Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour.

Any person,—

(i) who has been ordered under section 117 to give security for keeping the peace or for good behaviour, or

(ii) who is aggrieved by any order refusing to accept or rejecting a surety under section 121, may appeal against such order to the Court of Session:

Provided that nothing in this section, shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (4) of section 122.

374. Appeals from convictions.

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) 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.

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

(b) sentenced under section 325, or

(c) 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.

State Amendments

Punjab and Union Territory of Chandigarh:
In sub-section (3) of section 374, for the words "Magistrate of the first class" read as "Executive Magistrate".
[*Vide* Punjab Act. 22 of 1983 (w.e.f. 27-6-1983).

Comments

(i) When two views are possible and acquittal judgment of trial Court in murder case found reasonable, High Court not justified in taking different view with that of trial Court; *Ajit Singh Thakur Singh* v. *State of Gujarat,* AIR 1981 SC 733: (1981) Cr LJ 293: (1981) SCC 495: (1981) SCC (Cr) 184: (1981) Cr LR (SC) 167.

(ii) Leave to appeal refused by the High Court without giving any reason liable to be set aside; *State of Maharashtra* v. *Vithal Rao Pritirao Chauhan*, AIR 1982 SC 1215: (1982) Cr LJ 1743: (1981) 4 SCC 129: (1981) SCC (Cr) 807: 1982 Cr LR (SC) 19.

(iii) Sufficient cause must be established for not filing appeal within limitation period and that cause must arise before expiry of limitation period; *Ajit Singh Thakur Singh* v. *State of Gujarat*, AIR 1981 SC 733: (1981) Cr LJ 293: (1981) 1 SCC 495:
(1981) SCC (Cr) 184: (1981) Cr LR (SC) 167.

(iv) When the view taken by Sessions Judge was found by High Court to be manifestly wrong and that it had led to miscarriage of justice, High Court was entitled to set aside the acquittal; *Arun Kumar* v. *State of Uttar Pradesh,* 1989 Cr LJ 1460: AIR 1989 SC 1445.

(v) In grant of leave to appeal against acquittal issue of show-cause notice to accused before hearing appeal on merits is without jurisdiction and misuse of power of High Court; *R.V. Murthy (Dr.)* v. *State of Karnataka*, AIR 1982 SC 677: (1982) Cr LJ 423: (1981) 4 Scc 157: (1981) SCC (Cr) 810.

375. No appeal in certain cases when accused pleads guilty.

Notwithstanding anything contained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal.—

(a) if the conviction is by a High Court; or

(b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

376. No appeal in petty cases.

Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:—

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground—

(i) that the person convicted is ordered to furnish security to keep the peace; or

(ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or

(iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

377. Appeal by the State Government against sentence.

(1) Save as otherwise provided in sub-section (2), the State Government may in any case of conviction on a trial held by any Court other than a High Court, direct the Public prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

Comments

It would be clearly violative of Article 21 of the Constitution of India to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision to enhance the sentence; *State of Karnataka* v. *Benoy Thomas,* (1997) 2 Crimes 141 (Kant).

378. Appeal in case of acquittal.

(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

Comments

(i) In an appeal against acquittal the appellate Court has the undoubted power to review the entire evidence and to come to its own conclusion, but, in doing so, it should not only consider every matter on record having a bearing on the question of fact and the reasons given by the Court below in support of its order of acquittal but also should express the reasons in its judgment which let it to hold that the acquittal was not justified; *State of Maharashtra* v. *Joseph Mingel Koli,* (1997) 2 Crimes 228 (Bom).

(ii) If two conclusions can be based upon the evidence on record the High Court should not disturb the finding of acquittal recorded by the trial Court; *State of Maharashtra* v. *Suresh Nivrutti Bhurare,* (1997) 2 Crimes 257 (Bom).

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.

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 of 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.

381. Appeal to Court of Session how heard.

(1) Subject to the provisions of sub-section (2), an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:
Provided that an appeal against a conviction on a trial held by a Magistrate of the second class may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate.

(2) An Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate shall hear only such appeals as the Sessions Judge of the division may, by general or special order, make over to him or as the High Court may, by special order, direct him to hear

382. Petition of appeal.

Every appeal shall be made in the form of a petition in writing presented by the appellant of 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.

STATE AMENDMENT

Andaman and Nicobar Islands and Lakshadweep:

Section 382 shall be re-numbered as sub-section (1) of that section, and sub-section (1) as so re-numbered the following provisos and *Explanation* shall be added, namely:—
"Provided that where it is not practicable to file the petition of appeal to the proper Appellate Court, the petition of appeal may be presented to the Administrator or to an Executive Magistrate, not below the rank of Sub-Divisional Magistrate, he shall record thereon the date of presentation and, if he is satisfied that, by reason of the weather, transport or other difficulties, it is not possible for the appellant to obtain, from the proper Appellate Court, orders for the suspension of sentence or for bail, he may, in respect of such appeal, or an appeal forwarded to him under section 383, exercise all or any of the powers of the proper Appellate Court and sub-

section (1) of section 389 with regard to suspension of sentence or release of convicted person on bail:

Provided further that the order so made by Administrator or the Executive Magistrate shall have effect until it is reversed or modified by the proper Appellate Court.

Explanation.—For the purposes of the provisos to this section and section 383, `Administrator' in relation to a Union territory means the Administrator appointed by the President under article 239 of the Constitution, for that Union territory."
In section 382 after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

(2) For purposes of computation of the period of limitation, and for all other purposes, an appeal presented to an Administrator or an Executive Magistrate under sub-section (1) or as the case may be, under section 383, shall be deemed to be an appeal presented to the proper Appellate Court."
Vide Regulation 1 of 1974, sec. 4 (w.e.f. 30-3-1974).

383. Procedure when appellant in jail.

If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

STATE AMENDMENT

Andaman and Nicobar Islands and Lakshadweep:

In section 383, the following words shall be inserted at the end, namely:—
"or if, by reason of the weather, transport or other difficulties, it is not possible to forward them to the proper Appellate Court they shall be forwarded to the Administrator or an Executive Magistrate, not below the rank of a Sub-Divisional Magistrate, who shall, on receipt of such petition of appeal and copies, record thereon the date of receipt thereof and thereafter forward the same to the proper Appellate Court.
Vide Regulation 1 of 1974, sec. 4 (w.e.f. 30-3-1974).

384. Summary dismissal of appeal.

(1) 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:

Provided that—

(a) no appeal presented under section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same;

(b) no appeal presented under section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;

(c) no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

(4) Where an appeal presented under section 383 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 382 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 393, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law.

Comments

(i) While dismissing appeal summarily High Court should give some brief reasons so that Supreme Court may consider whether it requires further examination; *Degadu* v. *State of Maharashtra,* AIR 1981 SC 1218: (1981) Cr LJ 724: (1981) 2 SCC 575: (1981) SCC (Cr) 564.

(ii) Government of State where accused was convicted is the appropriate Government and not Government of the State where the offence was committed; *Hanumat Das* v. *Vinay Kumar,* AIR 1982 SC 1052: (1982) Cr LJ 977.

(iii) Non-summoning of lower Court record in appeal against conviction is not fatal; *Hanumat Das* v. *Vinay Kumar*, AIR 1982 SC 1052: (1982) Cr LJ 977.

385. Procedure for hearing appeals not dismissed summarily.

(1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given—

(i) to the appellant or his pleader;

(ii) to such officer as the State Government may appoint in this behalf;

(iii) if the appeal is from a judgment of conviction in a case instituted upon complaint to the complainant;

(iv) if the appeal is under section 377 or section 378, to the accused, and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

(2) The Appellate Court shall then send for the record or the case, if such record is not already available in that Court and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.

(3) Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not except with the leave of the Court urge or be heard in support of any other ground.

386. Powers of the Appellate Court.

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence—

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(3) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

Comments

(i) A wrong and erroneous order of acquittal though irrevocable in the absence of appeal by State would not operate as a bar in recording constructive liability of co-accused when concerted action with common intention stands proved; *Brathi* alias *Sukhdev Singh* v. *State of Punjab,* (1991) 1 Crimes 74 (SC).

(ii) In absence of an appeal preferred by State Government against their acquittal High Court could not on an appeal by respondents against their conviction alter the acquittal nor there can be a splitting up of the trial; *State of West Bengal* v. *Laisal Haque,* (1989) Cr LJ 865 (SC): AIR 1989 SC 129.

(iii) The power of an Appellate Court to review evidence in appeal against acquittal is as extensive as its powers in appeal against convictions but Appellate Court should be slow in interfering with the order of acquittal; *Lalit Kumar Sharma* v. *Superintendent and Remembrancer of Legal Affairs, Government of West Bengal*, (1989) Cr LJ 2297: AIR 1989 SC 2134.

(iv) Where evidence examined by Appellate Court unmistakenly proves that appellant was guilty under section 34 having shared a common intention with other accused who are acquitted and that acquittal was bad there is nothing to prevent the Appellate Court from expressing that view and giving the finding and determining the guilt of the appellants before it on the basis of that finding; *Brathi* alias *Sukhdev Singh* v. *State of Punjab,* 1991 Cr LJ 402 (SC).

(v) Where view of Sessions Judge in acquitting accused was reasonably possible then the High Court is not justified to interfere with acquittal; *Padman Meher* v. *State of Orissa*, AIR 1981 SC 447 (1980) Cr LJ 1507: (1981) SCC (Cr) 259: (1981) Cr LR (SC) 681.

(vi) Finding of trial Court that fatal blow to deceased was not given in prosecution of common object of the assembly and acquitted accused, such finding cannot be said to be clearly erroneous; *Surat Lal* v. *State of Madhya Pradesh,* AIR 1982 SC 1224: (1982) Cr LJ 1577: (1982) 1 SCC 488: (1982) SCC (Cr) 260.

(vii) When medical evidence proved that injuries sustained by victim is sufficient to cause death in ordinary course of nature, its rejection by High Court is not justified; *State of Uttar Pradesh* v. *Suresh*, AIR 1982 SC 1076: (1982) Cr LJ 850: (1981) 3 SCC 635: (1981) SCC (Cr) 774 : (1981) Cr LR (SC) 409.

(viii) The law clearly expects the Appellate Court to dispose of the appeal on merits not merely by perusing the reasoning of the trial Court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial Court are consistent with the material on record; *Mahendra Singh* v. *State of Rajasthan,* (1997) 3 Crimes 102 (Raj).

(ix) Reducing a sentence to already undergone and imposing a substantial fine would be making a mockery of our criminal justice delivery system; *Shriang shankar Lokhande* v. *State of Maharashtra*, (1997) 1 Crimes 479 (Bom).

(x) It is duty of an Appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even it can be relied upon then whether the prosecution can be said to have proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by Appellate Court in drawing inference from proved and admitted facts; *Padam Singh* v. *State of Uttar Pradesh,* AIR 2000 SC 361.

387. Judgments of subordinate Appellate Court.

The rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate:

Provided that unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

388. Order of High Court on appeal to be certified to lower Court.

(1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed and if such Court is that of a Judicial Magistrate other than the Chief Judicial Magistrate, the High Court's judgment or order shall be sent through the Chief Judicial Magistrate; and if such Court is that of an Executive Magistrate, the High Court's judgment or order shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

Comments

The order of the High Court on appeal has to be certified to the lower Court by which the finding, sentence or order appealed against was recorded; *K. Umapathy* v. *Superintendent of Jail,* (1997) 2 Crimes 609 (AP).

389. Suspension of sentence pending the appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

> (i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
>
> (ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

390. Arrest of accused in appeal from acquittal.

When an appeal is presented under section 378, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.

391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

392. Procedure where Judges of Court of appeal are equally divided.

When an appeal under this Chapter is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion:

Provided that if one of the Judges constituting the Bench, or, where the appeal is laid before another Judge under this section, that Judge, so requires, the appeal shall be re-heard and decided by a larger Bench of Judges.

393. Finality of judgments and orders on appeal.

Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the case provided for in section 377, section 378, sub-section (4) of section 384 or Chapter XXX:

Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits.

(a) an appeal against acquittal under section 378, arising out of the same case, or

(b) an appeal for the enhancement of sentence under section 377, arising out of the same case.

394. Abatement of appeals.

(1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation.—In this section, "**near relative**" means a parent, spouse, lineal descendant, brother or sister.

CHAPTER XXX - REFERENCE AND REVISION

395. Reference to High Court.

(1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation.—In this section, "Regulation" means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

(2) A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any Court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.

396. Disposal of case according to decision of High Court.

(1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Court by which the reference was made, which shall dispose of the case conformably to the said order.

(2) The High Court may direct by whom the costs of such reference shall be paid.

397. Calling for records to exercise powers of revision.—

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Comments

(i) When any revision in High Court is dismissed on the ground of limitation High Court can exercise power of revision *suo moto* under section 397; *Municipal Corporation of Delhi* v. *Girdhari Lal Sapru,* AIR 1981 SC 1169: (1981) Cr LJ 632: (1981) 2 SCC 758: (1981) SCC (Cr) 598.

(ii) Where both Sessions Judge and High Court having concurrent powers, second revision would not be competent under section 397 (3); *Asghar Khan* v. *State of Uttar Pradesh,* AIR 1981 SC 1697: (1981) Cr LR SC 481.

398. Power to order inquiry.

On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 of sub-section (4) of section 204 or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

Comments

It is well settled that the only order that can be made by the revising Court under section 398 is for further enquiry; *Harun Khan* v. *Mahesh Chand*, (1997) 2 Crimes 301 (MP).

399. Sessions Judge's powers of revision.

(1) In the case of any proceeding the record of which has been called for by himself the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Comments

It is settled law that no order to the prejudice of an accused or any other person can be made unless the said accused or the said person has been given an opportunity of being heard; *mohd. Afzal* v. *Noor Nisha Begum,* (1997) 2 Crimes 493 (Del).

400. Power of Additional Sessions Judge.

An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

401. High Court's powers of revision.

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

Comments

(i) When High Court adjourned all cases of a particular Advocate for some period it was wrong on part of High Court to pass *ex parte* order in revision application in which that particular Advocate was appearing; *Chandraeshwar Nath Jain* v. *State of Uttar Pradesh,* AIR 1981 SC 2009: (1981) Cr LJ 1690: (1981) SCC (Cr) 609.

(ii) High Court was not justified in interfering with current findings of fact and acquitting accused in offence of criminal breach of trust; *State of Karnataka* v. *Maygowda,* AIr 1982 SC 1171: (1982) Cr LJ 1397: (1981) 4 SCC 429: (1981) SCC (Cr) 849: (1982) Cr LR (SC) 39.

(iii) When accused acquitted without considering material evidence with inconsistent and faulty reasonings and probative value of FIR also ignored, High Court was justified in directing retrial; *Ayodhya Dube* v. *Ram Sumer Singh*, AIR 1981 SC 1415: (1981) Cr LJ 1016: (1981) Cr LR (SC) 430.

(iv) When complaint makes out *prima facie* case in proceeding instituted against partnership firm along with its partners and its managing partner dies, High Court should not quash proceeding; *Drugs Inspector* v. *B.K.A. Krishnaiah,* AIR 1981 SC 1164: (1981) Cr LJ 627: (1981) 2 SCC 454: (1981) SCC (Cr) 487: (1981) Cr LR (SC) 196.

(v) In absence of any statutory provision High Court cannot award sentence below the prescribed minimum under any special circumstances; *State of Andhra Pradesh* v. *R. Ranga Damappa*, AIR 1982 SC 1492.

(vi) The revisional jurisdiction when involved by a private complainant against an order of acquittal ought not to be exercised lightly and that it could be exercised only in exceptional case where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice; *Kaptan Singh* v. *State of Madhya Pradesh*, (1997) 4 Supreme 211.

402. Power of High Court to withdraw or transfer revision cases.

(1) Whenever one or more persons convicted at the same trial makes or make application to a High Court for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide, having regard to the general convenience of the parties and the importance of the question involved. Which of the two Courts should finally dispose of the applications for revision and when the High Court decides that all the application for revision should be disposed of by itself, the High Court shall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall direct that the applications for revision made to it be transferred to the Sessions Judge.

(2) Whenever any application for revision is transferred to the High Court, that Court shall deal with the same as if it were an application duly made before itself.

(3) Whenever any application for revision is transferred to the Sessions Judge, that Judge shall deal with the same as if it were an application duly made before himself.

(4) Where an application for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Court or to the any other Court at the instance of the person or persons whose applications for revision have been disposed of by the Sessions Judge.

403. Option of Court to hear parties.

Save as otherwise expressly provided by this Code no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.

404. Statement by Metropolitan Magistrate of grounds of his decision to be considered by High Court.

When the record of any trial held by a Metropolitan Magistrate is called for by the High Court or Court of Session under section 397, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

405. High Court's order to be certified to lower Court.

When a case is revised under this Chapter by the High Court or a Sessions Judge, it or he shall, in the manner provided by section 388, certify its decision or order to the Court by which the finding sentence or order revised was recorded or passed, and the Court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

CHAPTER XXXI - TRANSFER OF CRIMINAL CASES

406. Power of Supreme Court to transfer cases and appeals.—

(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a partly interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.

Comments

There is no substance in claim of accused for transfer of case on ground that Sessions Judge was biased as he did not allow accused to sit down during trial; *Autar Singh* v. *state of madhya pradesh,* AIr 1982 SC 1260: (1982) Cr LJ 1740: (1982) 1 SCC 438: (1982) SCC (Cr) 248.

407. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court—

> (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
>
> (b) that some question of law of unusual difficulty is likely to arise; or
>
> (c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(ii) that any particular case be committed for trial of to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one criminal Court to another criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.

Comments

The question of issuing notice for hearing the parties may not arise if the order is passed by the High Court *suo moto* even on the motion of Sessions Judge; *Sohan Singh* v. *State of Rajasthan,* (1997) 3 Crimes 204 (Raj).

408. Power of Sessions Judge to transfer cases and appeals.

(1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of section 407, except that sub-section (7) of that section shall so apply as if for the words "one thousand" rupees occurring therein, the words "two hundred and fifty rupees" were substituted.

409. Withdrawal of cases and appeals by Sessions Judges.

(1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him.

(2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, as Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(3) Where a Sessions Judge withdraws or recalls a case or appeal under sub-section (1) or sub-section (2) he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be.

410. Withdrawal of cases by Judicial Magistrates.

(1) Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) Any Judicial Magistrate may recall any case made over by him under sub-section (2) of section 192 to any other Magistrate and may require into or try such cases himself.

411. Making over or withdrawal of cases by Executive Magistrates.

Any District Magistrate or Sub-divisional Magistrate may-

(a) make over, for disposal, any proceeding which has been started before him, to any Magistrate subordinate to him;

(b) withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and dispose of such proceeding himself or refer it for disposal to any other Magistrate.

412. Reasons to be recorded.

A Sessions Judge or Magistrate making an order under section 408, section 409, section 410 or section 411 shall record his reasons for making it.

CHAPTER XXXII - EXECUTION, SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES

A—Death sentences

413. Execution of order passed under section 368.

When in a case submitted to the High Court for the confirmation of a sentence of death, the Court of Session receives the order of confirmation or other order of the High Court thereon, it shall cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Comments

No fixed period of delay could be held to make the death sentence inexecutable; *Triveniben (Smt.)* v. *State of Gujarat,* (1989) Cr LJ 870: AIR 1989 SC 142.

414. Execution of sentence of death passed by High Court.

When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant.

415. Postponement of execution of sentence of death in case of appeal to Supreme Court.

(1) Where a person is sentenced to death by the High Court and an appeal from its judgment lies to the Supreme Court under sub-clause (a) or sub-clause (b) of clause (1) of Article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until the period allowed for preferring such appeal has expired, or if an appeal is preferred within that period, until such appeal is disposed of.

(2) Where a sentence of death is passed or confirmed by the High Court, and the person sentenced makes an application to the High Court for the grant of a certificate under Article 132 or under sub-clause (c) of clause (1) of Article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until such application is disposed of by the High Court, or if a certificate is granted on such application until the period allowed for preferring an appeal to the Supreme Court on such certificate has expired.

(3) Where a sentence of death is passed or confirmed by the High Court, and the High Court is satisfied that the person sentenced intends to present a petition to the Supreme Court for the grant of special leave to appeal under Article 136 of the Constitution, the High Court shall order the execution of the sentence to be postponed for such period as it considers sufficient to enable him to present such petition.

416. Postponement of capital sentence on pregnant woman.

If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to imprisonment for life.

B—Imprisonment

417. Power to appoint place of imprisonment.

(1) Except when otherwise provided by any law for the time being in force, the State Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail the Court of Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under sub-section (2), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been released from the civil jail under section 58 of the Code of

Civil Procedure, 1908 (5 of 1908) or section 23 of the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be; or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be released under section 58 of the Code of Civil Procedure, 1908 (5 of 1908) or under section 23 of the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be.

418. Execution of sentence of imprisonment.

(1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by section 413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:

Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail and the accused may be confined in such place as the Court may direct.

(2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest.

419. Direction of warrant for execution.

Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

420. Warrant with whom to be lodged.

When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

C —Levy of fine

421. Warrant for levy of fine.

(1) When an offender has been sentenced to pay a fine the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;

(b) issue a warrant to the collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

Comments

Clause (a) of sub-section (1) of section 421 provides for issue of levy warrant by attachment and sale of movable property whereas clause (b) thereof provides for issue of warrant directing the Collector of District to realise the amount as arrears of land revenue; *M. Nagendrappa* v. *Commercial Tax Officer*, (1997) 2 Crimes 442 (Kant).

422. Effect of such warrant.

A warrant issued under clause (a) of sub-section (1) of section 421 by any Court may be executed within the local jurisdiction of such Court, and it shall authorise the attachment and sale of any such property outside such jurisdiction, when it is endorsed by the District Magistrate within whose local jurisdiction such property is found.

423. Warrant for levy of fine issued by a Court in any territory to which this Code does not extend.

Notwithstanding anything contained in this Code or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a criminal Court in any territory to which this Code does not extend and the Court passing the sentence issues a warrant to the Collector of a district in the territories to which this Code extends, authorising him to realise the amount as if it were an arrear of land revenue, such warrant shall be deemed to be a warrant issued under clause (b) of sub-section (1) of section 421 by a Court in the territories to which this Code extends, and the provisions of sub-section (3) of the said section as to the execution of such warrant shall apply accordingly.

424. Suspension of execution of sentence of imprisonment.

(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine and the fine is not paid forthwith, the Court may—

(a) order that the fine shall be payable either in fully on or before a date not more than thirty days from the date of the order, or in two or three installments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days;

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the installment thereof, as the case may be, is to be made; and if the amount of the fine or of any installment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

D —General provisions regarding execution

425. Who may issue warrant.

Every warrant for the execution of a sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor-in-officer.

426. Sentence on escaped convict when to take effect -

(1) When a sentence of death, imprisonment for life or fine is passed under this Code on an escaped convict, such sentence shall, subject to the provisions hereinbefore contained, take effect immediately.

(2) When a sentence of imprisonment for a term is passed under this Code on an escaped convict,—

(a) if such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately;

(b) if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

(3) For the purposes of sub-section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment.

427. Sentence on offender already sentenced for another offence.

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

STATE AMENDMENT

Tamil Nadu:
In section 247 after sub-section (1), the following sub-section shall be inserted, namely:—
"(1A) Notwithstanding anything contained in sub-section (1), when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment under sub-section (2) of section 380 of the Indian Penal Code (Central Act XLV of 1860), for an offence of theft of any idol or icon in any building used as a place of worship, such imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced".
[*Vide* Tamil Nadu Act 28 of 1993, sec. 6.

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.

Where an accused person has, on conviction, been sentenced to imprisonment for a term , not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

Comments

(i) Benefit of set off under section 428 is not available to life convicts; *Kartar Singh* v. *State of Haryana*, AIR 1982 SC 1433.

(ii) The period of detention referred to in section 428 is of the accused person during the investigation; *Ram Sarup* v. *Union of India,* 1988 Cr LJ 417: AIR 1988 SC 283.

429. Saving.

(1) Nothing in section 426 or section 427 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment and the person undergoing the sentence is after its execution to undergo a further substantive sentence or further substantive sentences of imprisonment, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

430. Return of warrant on execution of sentence.

When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it is issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

431. Money ordered to be paid recoverable as a fine.

Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 421, after the words and figures "under section 357", the words and figures "or an order for payment of costs under section 359" had been inserted.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will (5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and,—

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 433, the expression "appropriate Government" means,—

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases the Government of the State within which the offender is sentenced or the said order is passed.

Comments

When accused is a primary school teacher with no bad antecedent and amount robbed by him was a trivial amount and there was resistance in his arrest on any attempt to conceal his identity, the Government may remit or reduce sentence in exercise of power of clemency; *Ram Shankar* v. *State of Madhya Pradesh,* AIR, 1981 SC 644: (1981) Cr LJ 162: (1981) SCC (Cr) 378.

433. Power to commute sentence.

The appropriate Government may, without the consent of the person sentenced commute—

(a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine.

Comments

Even where Supreme Court upheld validity of section 433, Government cannot reduce or commute sentence to less than 14 years for weighty reasons as the crime was serious; *Shidagauda Nilgappa Ghandakar* v. *State of Karnataka*, AIR 1981 SC 764: (1981) Cr LJ 324: (1981) SCC (Cr) 163: (1981) Cr LR (SC) 112.

433A. Restriction on powers of remission or commutation in certain cases.

Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishment provided by laws or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

Comments

To read down or interpret section 433A of the Code with the aid of the changes proposed by the Indian Penal Code (Amendment) Bill would tantamount to hearing the provisions of the said bill as forming part of the Indian Penal Code which is clearly impermissible. To put such an interpretation with the aid of such extrinsic material would result in violence to the plain language of section 433A of the Code; *Ashok Kumar* v. *Union of India*, 1991 Cr LJ 2483 (SC)

434. Concurrent power of Central Government in case of death sentences.

The powers conferred by sections 432 and 433 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government.

435. State Government to act after consultation with Central Government in certain cases.

(1) The powers conferred by sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence—

(a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

(b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(c) which was committed by a person in the service of the Central Government, while acting or purporting to act in the discharge of his official duty.

shall not be exercised by the State Government except after consultation with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

Comments

Where the trial Court has sufficient reasons for taking lenient view on question of sentence, it should not be interfered; *State of Karnataka* v. *Hema Reddy* alias *Vema Reddy,* AIR 1981 SC 1417: (1981) Cr LJ 1019: (1981) 2 SCC 186:(1981)1 SCC (Cr) 3985: (1981) SCC (Cr) 429: (1981) Cr LR (SC) 278.

CHAPTER XXXIII - PROVISIONS AS TO BAIL AND BONDS

436. In what cases bail to be taken.

(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 or section 446A.

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

STATE AMENDMENT

Uttar Pradesh:

In the first proviso, to section (1) of section 436, for the word "discharge" the word "release" shall be substituted.
Vide U.P. Act 1 of 1984 (w.e.f. 1-5-1984).

Comments

It is true that Supreme Court does not interfere with an order granting bail but judicial discipline will be sacrificed at the alter of judicial discretion if jurisdiction under Article 136 is refused to be exercised; *State of Maharashtra* v. *Captain Buddhikota Subha Rao*, (1989) cr LJ 2317: AIR 1989 SC 2292.

437. When bail may be taken in case of non-bailable offence.

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:
Provided further that the Court may also direct that a person referred to in clause

(ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that the shall comply with such directions as may be given by the Court.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the

accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court may impose any condition which the Court considers necessary—

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) otherwise in the interests of justice.

(4) An officer or a Court releasing any person on bail under sub-section (1), or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

Comments

(i) In non-bailable cases in which the person is not guilty of an offence punishable with death or imprisonment for life, the Court will exercise its discretion in favour of granting bail subject to sub-section (3) of section 437 if it deems necessary to act under it; *Anil Sharma* v. *State of Himachal Pradesh*, (1997) 3 Crimes 135 (HP).

(ii) Unless exceptional circumstances are brought to the notice of the Court which may defeat the proper investigation and fair trial, the Court will not decline bail to a person

who is not, accused of an offence punishable with death or imprisonment for life; *Anil Sharma* v. *State of Himachal Pradesh,* (1997) 3 Crimes 135 (HP).

(iii) The application of petitioner is dismissed by High Court by a cryptic order. High Court to pass a reasoned order while disposing of application; *Dhruv* v. *State of Bihar*, AIR 2000 SC 209.

438. Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including—

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

STATE AMENDMENTS

Maharashtra:

For section 438, the following section shall be substituted, namely:—

439. Special powers of High Court or Court of Session regarding bail.

(1) A High Court or Court of Session may direct—

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

STATE Amendments

Punjab and Union Territory of Chandigarh:

In its application to the State of Punjab and Union Territory of Chandigarh after section 439, following section shall be inserted, namely:—

440. Amount of bond and reduction thereof.

(1) The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

441. Bond of accused and sureties.

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

442. Discharge from custody.

(1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2) Nothing in this section, section 436 or section 437 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

443. Power to order sufficient bail when that first taken is insufficient.

If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do, may commit him to jail.

444. Discharge of sureties.

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

445. Deposit instead of recognizance.

When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court of officer may if in lieu of executing such bond.

446. Procedure when bond has been forfeited.

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.—A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

Comments

(i) Each surety liable for penalty in forfeiture of bond. Allotment of half share not legal; *Mohammed Kunju* v. *State of Karnataka*, AIR 2000 SC 6: 2000 Cr LJ 165 (SC).

(ii) Forfeiture of a bond would entail the penalty against each surety for the amount which he has undertaken in the bond executed by him. Both the sureties cannot claim to share the amount by half and half as each can be made liable to pay; *Mohd. Kunju* v. *State of Karnataka*, AIR 2000 SC 6: 2000 Cr LJ 165 (SC).

446A. Cancellation of bond and bailbond.

Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition—

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.

447. Procedure in case of insolvency or death of surety or when a bond is forfeited.

When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 446, the Court by whose order such bond was taken, or a Magistrate of the first class may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

448. Bond required from minor.

When the person required by any Court, or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

449. Appeal from orders under section 446.

All orders passed under section 446 shall be appealable,—

(i) in the case of an order made by a Magistrate, to the Sessions Judge;

(ii) in the case of an order made by a Court of Sessions, to the Court to which an appeal lies from an order made by such Court.

Comments

(i) Challenging order imposing penalty by way of appeal as second appeal before High Court not maintainable; *Mohammed Kunju* v. *State of Karnataka*, AIR 2000 SC 6: 2000 Cr LJ 165 (SC).

(ii) The order in this case was passed by Chief Metropolitan Magistrate and hence the appeals preferred by appellants before the Sessions Court were according to law. Clause (ii) of section 449 will not apply in any case where the appeal lies to Session Court as the said clause deals with a different situation when the original order has been passed by the Sessions Court in which the case appeal normally lies to the High Court; *Mohammed Kunju* v. *State of Karnataka*, AIR 2000 SC 6: 2000 Cr LJ 165 (SC).

450. Power to direct levy of amount due on certain recognizances.

The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond for appearance or attendance at such High Court or Court of Session.

CHAPTER XXXIV - DISPOSAL OF PROPERTY

451. Order for custody and disposal of property pending trial in certain cases.

When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, "property" includes—

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

COMMENTS

(i) The semi processed films and the negatives are not themselves items of property regarding which offences have been committed; *Sajan K.Varghese* v. *State of Kerala,* (1989) Cr LJ 897: AIR 1989 SC 1058.

(ii) The disposal of properties should be done by Chief Judicial Magistrate before whom the matter relating to disposal of other claims was pending; *Sulekh Chand* v. *Suresh Chand,* (1991) Cr LJ 469 (SC).

452. Order for disposal of property at conclusion of trial.

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term " property " includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

453. Payment to innocent purchaser of money found on accused.

When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

454. Appeal against orders under section 452 or section 453.

(1) Any person aggrieved by an order made by a Court under section 452 or section 453, may appeal against it to the Court to which appeals ordinarily lie from convictions by the former Court.

(2) On such appeal, the Appellate Court may direct the order to be stayed pending disposal of the appeal, or may modify, alter or annul the order and make any further orders that may be just.

(3) The powers referred to in sub-section (2) may also be exercised by a Court of appeal, confirmation or revision while dealing with the case in which the order referred to in sub-section (1) was made.

455. Destruction of libellous and other matter.

(1) On a conviction under section 292, section 293, section 501 or section 502 of the Indian Penal Code (45 of 1860), the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under section 272, section 273, section 274, or section 275 of the Indian Penal Code (45 of 1860), order the food, drink drug or medical preparation in respect of which the conviction was had, to be destroyed.

STATE AMENDMENT

Tamil Nadu:

In sub-section (1) of section 455, after the word and figures "section 292" the word, figures and letter "section 292A" shall be inserted.
Vide Tamil Nadu Act 13 of 1982, sec. 2 (w.e.f. 21-9-1981).

456. Power to restore possession of immovable property.

(1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

(2) Where the Court trying the offence has not made an order under sub-section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.

(3) Where an order has been made under sub-section (1), the provisions of section 454 shall apply in relation thereto as they apply in relation to an order under section 453.

(4) No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

457. Procedure by police upon seizure of property.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

COMMENTS

If in the opinion of the Court seized property is required for use at the time of enquiry or trial property shall not be released, otherwise it may be released on furnishing adequate security; *Free Legal Aid Committee* v. *State of Bihar*, (1982) BLJ 241.

458. Procedure when no claimant appears within six months.

(1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed.

(2) An appeal shall lie against any such order to the Court to which appeals ordinarily lie from convictions by the Magistrate.

459. Power to sell perishable property.

If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than ten rupees, the Magistrate may at any time direct it to be sold; and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

CHAPTER XXXV - IRREGULAR PROCEEDINGS

460. Irregularities which do not vitiate proceedings.

If any Magistrate not empowered by law to do any of the following things, namely:—

(a) to issue a search-warrant under section 94;

(b) to order, under section 155, the police to investigate an offence;

(c) to hold an inquest under section 176;

(d) to issue process under section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;

(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190;

(f) to make over a case under sub-section (2) of section 192;

(g) to tender a pardon under section 306;

(h) to recall a case and try it himself under section 410; or

(i) to sell property under section 458 or section 459, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

461. Irregularities which vitiate proceedings.

If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—

(a) attaches and sells property under section 83;

(b) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;

(c) demands security to keep the peace;

(d) demands security for good behaviour;

(e) discharges a person lawfully bound to be of good behaviour;

(f) cancels a bond to keep the peace;

(g) makes an order for maintenance;

(h) makes an order under section 133 as to a local nuisance;

(i) prohibits, under section 143, the repetition or continuance of a public nuisance;

(j) makes an order under Part C or Part D of Chapter X;

(k) takes cognizance of an offence under clause (c) of sub-section (1) of section 190;

(l) tries an offender;

(m) tries an offender summarily;

(n) passes a sentence, under section 325, on proceedings recorded by another Magistrate;

(o) decides an appeal;

(p) calls, under section 397, for proceedings; or

(q) revises an order passed under section 446, his proceedings shall be void.

462. Proceedings in wrong place.

No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice

463. Non-compliance with provisions of section 164 or section 281.

(1) If any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under section 164 or section 281, is tendered, or has been received, in evidence finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

(2) The provisions of this section apply to Courts of appeal, reference and revision.

464. Effect of omission to frame, or absence of, or error in, charge.

(1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Comments

It is well-settled that where the Court frames a charge on a major Court the law does not provide that it should also frame a charge under the minor Court; *State of Maharashtra* v. *Vinayak Tukaram Utakar,* (1997) 2 Crimes 615 (Bom).

465. Finding or sentence when reversible by reason of error, omission or irregularity.

(1) Subject to the provisions hereinbefore contained, on finding sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

466. Defect or error not to make attachment unlawful.

No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want or form in the summons, conviction, writ of attachment or other proceedings relating thereto.

CHAPTER XXXVI - LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES

467. Definitions —

For the purposes of this Chapter, unless the context otherwise, requires, "period of limitation" means the period specified in section 468 for taking cognizance of an offence.

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

Comments

(i) Once the limitation has begun to run, it runs its full course; *Venkappa Gurappa Hosur* v. *Kasawwa,* (1997) 4 Supreme 217.

(ii) Sub-section (3) of section 468 which was added by Cr. P (Amendment Act), 1978 provides that in relation to offences which may be tried together, the period of limitation shall be tried together, the period of limitation shall be determined with reference to the offence which is punishable with the more or most severe punishment. The language of sub-section (3) of section 468 makes it imperative that the limitation provided for taking cognizance in section 468 is in respect of offence charged and not in respect of offence finally proved; *State of Himachal Pradesh* v. *Tara Dutta*, AIR 2000 SC 297.

(iii) When the respondents were charged under section 468 read with 120 B per which the impossible punishment is 7 years and section 5(2) of Prevention of Corruption Act 1947, which is punishable with imprisonment for a term which may extend to 7 years and for such offences no period as limitation having been provided for in section 468, the cognizance taken by Special Judge cannot said to be barred by limitation; *State of Himachal Pradesh* v. *Tara Dutta*, AIR 2000 SC 297.

469. Commencement of the period of limitation.

(1) The period of limitation, in relation to an offence, shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded

470. Exclusion of time in certain cases.

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where , under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, than, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender—

(a) has been absent from the India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

471. Exclusion of date on which Court is closed.

Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.

Explanation.—A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

472. Continuing offence.

In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

473. Extension of period of limitation in certain cases.

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

COMMENTS

(i) It is not necessary to decide whether the extension of period of limitation under section 473 must precede of taking of cognizance of the offence; *Srinivas Pal* v. *Union Territory of Arunachal Pradesh (Now State)*, 1988 Cr LJ 1803: AIR 1988 SC 1729.

(ii) Whenever a Magistrate invokes the provision and condones the delay the order of Magistrate must indicate that he was satisfied on the facts and circumstances of case that the delay has been properly explained and necessary to condone delay; *State of Himachal Pradesh* v. *Tara Dutta*, AIR 2000 SC 297.

CHAPTER XXXVII - MISCELLANEOUS

474. Trials before High Court.

When an offence is tried by the High Court otherwise than under section 407, it shall, in the trial of the offence, observe the same procedure as a Court of Sessions would observe, if it were trying the case.

475. Delivery to commanding officers of persons liable to be tried by Court-martial.

(1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950), and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, navel or air force law, or such other law, shall be tried by a Court to which this Code applies or by a Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air-force station, as the case may be, for purpose of being tried by a Court-martial.

Explanation.—In this section—

(a) "unit" includes a regiment, corps, ship, detachment, group, battalion or company.

(b) "Court-martial" includes any tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.

(2) Every Magistrate shall, on receiving a written application for that purposes by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situate within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial.

476. Forms.

Subject to the power conferred by Article 227 of the Constitution, the forms set forth in the Second Schedule, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

477. Power of High Court to make rules.

(1) Every High Court may, with the previous approval of the State Government, make rules—

(a) as to the persons who may be permitted to act as petition-writers in the Criminal Courts subordinate to it;

(b) regulating the issue of licences to such persons, the conduct of business by them, and the scale of fees to be charged by them.

(c) providing a penalty for a contravention of any of the rules so made and determining the authority by which such contravention may be investigated and the penalties imposed;

(d) any other matter which is required to be, may be, prescribed.

(2) All rules made under this section shall be published in the Official Gazette.

Comments

Rules and orders for the guidance of the criminal Courts in a state are issued by the High Court in exercise of its powers conferred by Article 227 of the Constitution of India and section 477 of the Code of Criminal Procedure; *K. Umapathy* v. *Superintendent of Jail,* (1997) 2 Crimes 609 (AP).

478. Power to alter functions allocated to Executive Magistrates in certain cases.—

If the Legislative Assembly of a State by a resolution so permits, the State Government may, after consultation with High Court, by notification, direct that references in sections 108, 109, 110, 145 and 147 to an Executive Magistrate shall be construed as references to a Judicial Magistrate of the first class.

STATE AMENDMENT

Maharashtra:

In section 478 for the words "to an Executive Magistrate shall be construed" the words "to an Executive Magistrate in the areas of the State outside Greater Bombay shall be construed" shall be substituted.
Vide Maharashtra Act 1 of 1978 (w.e.f. 15-4-1978).

480. Practising pleader not to sit as Magistrate in certain Courts.

No pleader who practises in the Court of any Magistrate shall sit as a Magistrate in that Court or in any Court within the local jurisdiction of that Court.

STATE AMENDMENT

Karnataka:

After section 480, the following section(480A) shall be inserted.

481. Public servant concerned in sale not to purchase or bid for property.

A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

482. Saving of inherent power of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

COMMENTS

(i) When the investigation of the case had been handed over to the CID because of unsatisfactory investigation by the police, the quashing of charges under section 302 read with section 120B, IPC against the accused in exercise of powers under section 482 by the High Court on the conclusion of the inadequacy of evidence was unwarranted as at the stage of framing of charges,

meticulous consideration of evidence and material by the Court was not required; *Radhey Shyam* v. *Kunj Behari*, (1990) Cr LJ 668 (SC) : AIR 1990 SC 121.

(ii) In exercising jurisdiction under section 482 High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not; *State of Bihar* v. *Murad Ali Khan,* (1989) Cr LJ 1005: AIR 1989 SC 1.

(iii) To prevent abuse of the process of the Court, High Court in exercise of its inherent powers under section 482 could quash the proceedings but there would be justification for interference only when the complaint did not disclose any offence or was frivolous vexatious or oppressive; *Dhanlakshmi (Mrs.)* v. *R. Prasana Kumar,* (1990) Cr LJ 320 (DB): AIR 1990 SC 494.

(iv) Where there was some discrepancy mainly in regard to the implications of respondent by name in the FIR and the statement of the witnesses recorded during the investigation, the practice of prejudging the question by the High Court without affording reasonable opportunity to the prosecution to substantiate the allegations have on more than one occasion been found fault with by the Supreme Court, Thus there is no justification by the High Court to interfere with the prosecution at the preliminary stage; *State of Bihar* v. *Raj Narain Singh,* (1991) Cr LJ 1416 (1417) (SC).

(v) If the allegation made in the First Information Report are taken at their face value and accepted in their entirety do not constitute an offence the criminal proceedings constituted on the basis of such FIR should be quashed; *State of Uttar Pradesh through CBI, SPE Lucknow* v. *R.K. Srivastava,* (1989) Cr LJ 230: AIR 1989 SC 2222.

(vi) It amounts to abuse of the process of the Court if without *prima facie* case having been made out a person is summoned to face trial in a criminal proceeding; *Laloo Prasad* v. *State of Bihar,* (1997) 2 Crimes 498 (Pat).

(vii) It is well settled that the inherent powers under section 482 can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind there will be no inconsistency between sections 397(2) and 482 of this Code; *Basudev Bhoi* v. *Bipadabhanjan Puhan,* (1997) 2 Crimes 331 (Ori).
(viii) If the prosecution has been instituted within six months of Bengal Excise Act, 1909 under section 92 alleged there is no question of producing any sanction as the Magistrate would then be free to take cognizance under the Act. Reasoning adopted by the learned Single Judge that steps for obtaining sanction should have been adopted before the expiry of first six months period has no support in section 92. Quashing of proceeding not proper; *State of West Bengal* v. *Rashmoy Das*, AIR 2000 SC 228.

(ix) Necessary ingredients of offence of cheating or criminal branch of trust have not been made out but the attendant circumstances indicate that the FIR was lodged to prompt the filing of criminal complaint against the informant under section 138 N.I. Act Quashing of FIR was proper to avoid the abuse of process; *Sunil Kumar* v. *Escorts Yamaha*, AIR 2000 SC 27: 2000 Cr LJ 174 (SC).

(x) FIR lodges to preempt the filing of criminal complaint against the informant under section 138 N.I. Act Quashing of FIR proper, (*See* also AIR 1992 SC 1815); *Sunil Kumar* v. *Escorts Yamaha Motors Ltd.*, AIR 2000 SC 27: 2000 Cr LJ 174 (SC).

(xi) So far as the quashing of complaints and inquiry on the basis of FIR registered by the complainant are concerned the High Court was not justified in interfering with the same and quashing the proceeding by an elaborate decision on the merit of matter and in coming to conclusion that section 195 of Cr PC will be a bar it was a premature conclusion. Order quashing the two complaint set aside; *Manohar* v. *Ashoka*, AIR 2000 SC 202.

(xii) The extra-ordinary power under section 482 of Code have to be exercised sparingly and should not be resorted to like remedy of appeal or revision; *Kavita (Smt.)* v. *State*, 2000 Cr LJ 315 (Del).

(xiii) In absence of any allegation in complaint that the petitioner was a director on the date when cheque was issued by company or that he was incharge of and was responsible to company, the complaint is liable to be quashed; *M. Chockalingam* v. *Sundaram Finance Service Ltd.*, 2000 Cr LJ 137 (Mad).

(xiv) When the provisions under section 37 of N.D.P.S. are applicable and operative with non-obstanate clause, the powers of High Court remains restricted by limitation under section 37 (1)(b) of Act in considering bail application of accused charged for offence under N.D.P.S. Act, then the accused not entitled to grant of interim bail; *Islamuddin* v. *State of Delhi*, 2000 Cr LJ 108 (Del.).

(xv) In absence of any valid ground, the F.I.R. lodged against immigration consultant for violating sections 10, 16 of Emigration Act by issuing advertisement, High Court can not interfere at the stage of F.I.R.; *M.D.K. Immigration Consultant, Chandigarh* v. *Union of India*, 2000 Cr LJ 252 (P&H).

483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.

Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

Comments

When alternative remedy is available, inherent powers cannot be exercised; *Alimuddin Khan* v. *Nasiran Bibi*, 1998 Cr LJ 1811 (Ori).

484. Repeal and savings.

(1) The Code of Criminal Procedure, 1898 (5 of 1898), is hereby repealed.

(2) Notwithstanding such repeal,—

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), as in force immediately before such commencement (hereinafter referred to as the Old Code), as if this Code had not come into force:

Provided that every inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code;

(b) all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this Code, shall be deemed, respectively to have been published, issued, conferred, prescribed defined, passed or made under the corresponding provisions of this Code.

(c) any sanction accorded or consent given under the Old Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Code and proceedings may be commenced under this Code in pursuance of such sanction or consent;

(d) the provisions of the Old Code shall continue to apply in relation to every prosecution against a Ruler within the meaning of Article 363 of the Constitution.

(3) Where the period prescribed for an application or other proceeding under the Old Code had expired on or before the commencement of this Code, nothing in this Code shall be construed as enabling any such application to be made or proceeding to be commenced under this Code by reason only of the fact that a longer period therefor is prescribed by this Code or provisions are made in this Code for the extension of time.

STATE AMENDMENT

Uttar Pradesh:

In sub-section (2) of section 484, after clause (d), the following clause shall be inserted and be deemed always to have been inserted, namely:—

"(e) the provisions of the United Provinces Borstal Act, 1938 (U.P. Act VIII of 1938) the United Provinces First Offenders Probation Act, 1938 (U.P. Act VI of 1938), and the Uttar Pradesh Children Act, 1951 (U.P. Act 1 of 1951) shall continue in force in the State of Uttar Pradesh until altered or repealed or amended by the competent Legislature or other competent authority, and accordingly, the provisions of section 360 of this case shall not apply to that State, and the provisions of section 361 shall apply with the substitution of references to the Central Act named therein by references to the corresponding Acts in force in the State."
[*Vide* U.P. Act 16 of 1976, sec. 10 (w.e.f. 1-5-1976).

In sub-section (2) of section 484, in clause (a) after the proviso, the following further proviso shall be inserted, namely:—
"Provided further that the provisions of section 326 of this Code as amended by the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1976 shall apply also to every trial pending in a Court of Session at the commencement of this Code and also pending at the commencement of the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1983".
[*Vide* U.P. Act 1 of 1984, sec. 11 (w.e.f. 1-5-1984). (c) any sanction accorded or consent given under the Old Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Code and proceedings may be commenced under this Code in pursuance of such sanction or consent;

(d) the provisions of the Old Code shall continue to apply in relation to every prosecution against a Ruler within the meaning of Article 363 of the Constitution.

(3) Where the period prescribed for an application or other proceeding under the Old Code had expired on or before the commencement of this Code, nothing in this Code shall be construed as enabling any such application to be made or proceeding to be commenced under this Code by reason only of the fact that a longer period therefor is prescribed by this Code or provisions are made in this Code for the extension of time.

STATE AMENDMENT

Uttar Pradesh:

In sub-section (2) of section 484, after clause (d), the following clause shall be inserted and be deemed always to have been inserted, namely:—

"(e) the provisions of the United Provinces Borstal Act, 1938 (U.P. Act VIII of 1938) the United Provinces First Offenders Probation Act, 1938 (U.P. Act VI of 1938), and the Uttar Pradesh Children Act, 1951 (U.P. Act 1 of 1951) shall continue in force in the State of Uttar Pradesh until altered or repealed or amended by the competent Legislature or other competent authority, and accordingly, the provisions of section 360 of this case shall not apply to that State, and the provisions of section 361 shall apply with the substitution of references to the Central Act named therein by references to the corresponding Acts in force in the State."
Vide U.P. Act 16 of 1976, sec. 10 (w.e.f. 1-5-1976).

In sub-section (2) of section 484, in clause (a) after the proviso, the following further proviso shall be inserted, namely:—

"Provided further that the provisions of section 326 of this Code as amended by the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1976 shall apply also to every trial pending in a Court of Session at the commencement of this Code and also pending at the commencement of the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1983".

Vide U.P. Act 1 of 1984, sec. 11 (w.e.f. 1-5-1984).

****