Sixth Semester

LLB Paper Code: LLB 310

Subject: Code of Criminal Procedure

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UNIT -1: INTRODUCTION

❖ Object and Importance of Cr.P.C

The basic purpose of the Criminal Procedure Code, among other things, is to ensure a fair trial where none of the rights of the accused are compromised nor are they unjustifiably favoured. Furthermore, to ensure that the judge concerned hears all parties who are relevant to the trial, their presence at the trial is obviously important. That is why an entire chapter of the Code concerns itself with the process of ensuring the attendance of any person concerned with the case, including an accused or a witness, through various measures, viz. summons, warrant, proclamation and attachment of property. The latter two are used when the former do not yield satisfactory results. Many would argue that the simplest way to ensure the presence of a person, especially an accused, would be to arrest him in all circumstances and detain him so that his presence is beyond doubt. However, such an action would go against the fundamental right that this Constitution provides with, the right to personal liberty under Article 21. Criminal law hinges on that right and no person can be deprived of this right unless very cogent reasons are present which argue against his release. This is why the Code envisages both warrant and summons to procure the attendance of persons concerned. In this project, I will look into the four variants used to procure the attendance of persons for trial. Of course, since the provisions are mostly procedural in nature, few substantive issues arise but interpretation of these provisions nevertheless gives rise to various issues. Moreover, the way they are used by the various functionaries involved viz. the judiciary and the police, also has given rise to substantive literature on this. Furthermore, I will give special attention to procurement of attendance of witnesses and how the provisions have been used by the functionaries in ensuring that witnesses attend the trial. Substantive laws are of no use without existence of a procedure so as to apply it, and would act only as a cadaver. This makes it necessary for us to have a procedure in order to make substantive laws pragmatic. Criminal Procedure or Code of Criminal Procedure, 1973 (hereinafter Code) being one such procedural law provides a track on which laws relating to crimes can scamper smoothly.

The Code of Criminal Procedure as it stands today is a hybrid law, with an improved form as a result of numerous legislative changes. The evolution of Code of Criminal Procedure can be traced back to the 1861 when the first code was enacted after the enactment of the Indian Penal Code, 1860. Subsequently, the Code was succeeded by Act 10 of 1882 and the latter was followed by Act 10 of 1882. As many as sixteen acts related to Criminal Procedure were passed since 1882. The code was again replaced by the Code of Criminal Procedure in 1898. Subsequently, the 1898 code was amended by the Code of Criminal Procedure Amendment Act, 1923. In 1958, the First Law Commission in its 14th Report made extensive recommendations on the reform of the criminal justice system. The recommendations of the committee were

considered and the Code was amended. In 1973, on the recommendations of the Fifth law commission's Forty-First report, the Parliament enacted the Code of Criminal Procedure, 1973.

Prior to the enactment of the Code of Criminal Procedure of 1973, the system of prosecution in India contained several elements that were criticized as weaknesses by the Law Commission that "there is no uniformity in the prosecuting organization in India", but that "generally speaking, prosecution in the magisterial courts is in the hands of either police officials or persons recruited from the Bar and styled 'Police Prosecutors' or 'Assistant Public Prosecutors'", who "work under the directions of the Police department."

This had led to a setup where "the identity of the prosecuting agency was practically merged with that of the police and the prosecution branch was not recognized as a separate and distinct entity, independent of police control." The Law Commission believed that such a setup was flawed, because the Police Department had neither the legal know-how to conduct a prosecution, nor the "degree of detachment necessary in a prosecutor." On a more general note, the Commission also criticized the overall subordination of the prosecutor, to the District Superintendent of Police (in cases before the magisterial courts) and to the District Magistrate (in prosecutions at the Sessions Courts), who "controlled to a large extent" the exercise of the prosecutor's powers. As a result, it recommended not only that the prosecution agency be made separate from the police, but also that its subordination to the executive be reduced, and that it be given more independent powers in the actual conduct of the prosecution- for example, in deciding whether or not to withdraw prosecutions. To this end, the Commission suggested that a separate prosecution department be established in each district, headed by a 'Director of Public Prosecutions', who would, however, be "responsible to the State Government." Clearly, therefore, although the Law Commission's report did continue to conceptualize the status of the prosecutor as an agent of the Government, responsible to it, it also noted the importance of his or her independence from both the police and the State executive. The Commission's recommendations were espoused, but only to some measure, and not in so many words, in the Code of Criminal Procedure of 1973.

Emphasis must also be laid on the intent and underlying objective of the Code of Criminal Procedure where it can be inferred from the 14th Law Commission report where it is stated that the importance of the Code of Criminal Procedure is based on two considerations. First, expense, delay or uncertainty in applying the best laws for the prevention and punishment of offences would render those laws useless or oppressive and second the law relating to criminal procedure is more constantly used and affects a greater number of persons than any other law.

From a legal standpoint, the object of the Criminal procedure code is to set up a mechanism for the ascertainment of the guilt or innocence of the accused and the code would provide machinery for punishment of offences against a substantive law in the form of a law dealing with the process of applying the instrument of criminal law to the facts of a particular case.

❖ **Functionaries under the Cr.P.C**

Functionaries under the code: include the Magistrates and Judges of the Supreme Court and high Court, Police, Public Prosecutors, Defence Counsels Correctional services personnel.

Functions, Duties and Powers of these Machineries:

- **Police:** The code does not mention anything about the constitution of police. It assumes the existence of police and devolves various powers and responsibilities on to it. The police force is an instrument for the prevention and detection of crime.The administration of police in a district is done by DSP(District Superintendent of Police under the direction and control of District Magistrate. Every police officer appointed to the police force other than the Inspector-General of Police and the District superintendent of police receives a certificate in the prescribed form by the virtue of which he is vested with the powers, functions and privileges of a police officer which shall be cease to be effective and shall be returned forthwith when the police officer ceases to be a police officer. The CrPC confers specific powers such as power to make arrest, search and investigate on the members of the police force who are enrolled as police officers. Wider powers have been given to police officers who are in charge of a police station.As per section 36 of CrPC which reads as " the police officers superior in charge of a police station may exercise the powers of such officials."

- **Prosecutor** If the crime is of cognizable in nature, the state participates in a criminal trial as a party against the accused. Public Prosecutor or Assistant Public Prosecutor is the state counsel for such trials.Its main duty is to conduct Prosecutions on behalf of the state. The public Prosecutor cannot appear on behalf of accused.[ix] According to the prevailing practice, in respect of cases initiated on police reports, the prosecution is conducted by the Assistant Public Prosecutor and in cases initiated on a private complaint; the prosecution is either conducted by the complainant himself or by his duly authorized counsel.

- **Defense Counsel:** According to section 303, any person accused of an offence before a criminal court has a right to be defended by a pleader of his choice. Such pleaders are not in regular employment of the state and a paid remuneration by the accused person. Since, a qualified legal practitioner on behalf of the accused is essential for ensuring a fair trial, section 304 provides that if the accused does not have means to hire a pleader, the court

shall assign a pleader for him at state's expense. At present there are several schemes through which an indigent accused can get free legal aid such as Legal Aid Scheme of State, Bar Association, Legal Aid and Service Board and Supreme Court Senior Advocates Free Legal Aid society. The legal Services Authorities Act, 1987 also provides free legal aid for the needy.

- **Prison authorities and Correctional Services Personnel**: The court presumes the existence of Prisons and the Prison authorities. It empowers Magistrates and judges under certain circumstances to order detention of under trial prisoners in jail during the pendency of the proceedings. It also empowers the courts to impose sentences of imprisonment on convicted persons and to send them to prison authorities. However, the code does not make specific provisions for creation, working and control of such machinery. These matters are dealt with in separate acts such as The Prisons Act 1894, The Prisoners Act 1900 and The Probation of Offenders Act 1958.

❖ **<u>Basic Concepts</u>:**

- **Bailable Offence**

"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;

- **Non-Bailable Offence**

A non-bailable offence is a serious offence and for it, the accused cannot demand to be released on bail as a right. Under these offences, the accused can be released on bail only by the order of the competent court.

- **Cognizable Offence**

"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

- **Non-cognizable Offence**

"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

- **Complaint**

"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.

- **Charge**

  "Charge" includes any head of charge when the charge contains more heads than one

- **Police Report**

  "Police report" means a report forwarded by a police officer or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf

- **Investigation**

  "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 authorized by a Magistrate in this behalf;

- **Inquiry and Trial**

  "Inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court; however, the term "trial" has not been defined under the code but is commonly understood to mean a judicial proceeding where evidences are allowed to be proved or disproved and guilt of a person is judged leading to acquittal or conviction.

- **Summons Case**

  "Summons-case" means a case relating to an offence, and not being a warrant-case

- **Warrant Case**

  "Warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

UNIT-II: ARREST, BAIL AND PRE-TRIAL PROCEEDINGS

❖ **Arrest and Rights of an Arrested Person**

Under Section 57/167of the CrPC, the accused must be produced before a Magistrate within 24 hours of arrest. If the investigation cannot be concluded within this time, a Magistrate may order for the remand of the arrested person to police custody u/s 167 (3) of the Cr.P.C. The Magistrate should be fully satisfied that there is good ground to remand the accused to police custody. Under Section 50 of the CrPC, the arrested person is to be informed of the particulars of the offence or any other grounds for arrest. Further, if arrested without a warrant for an offence which is bailable, he/she must be informed that he/she is entitled to be released on bail. Under Section 50A of the CrPC, the arrested person is entitled to have a person nominated by him informed about the arrest and moreover the Magistrate is required to satisfy himself that the provisions of this Section are complied with. The Supreme Court has also recognized the right of the arrested person to have access to a lawyer in *Nandini Satpathy* [(1978) 2SCC 424] and *DK Basu* [(1997) 1 SCC 410]. Under Section 51 CrPC, a person who is arrested may be searched and a list shall be prepared of any articles found on his person. This personal search memo is especially important if there is any allegation of recovery of incriminating material from the person of the accused.

Under Section 54 CrPC, the arrested person can request that he/she be examined by a medical practitioner if the examination of his person will either disprove the commission of the offence by him, or will prove the commission of any offence against his body by another person. Under Section 53 and 53A CrPC, the police can send the arrested person for medical examination.

"Arrest" means:

"a seizure or forcible restraint; an exercise of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge." [Legal Dictionary by Farlex]

The purpose of an arrest is to bring the arrestee before a court or otherwise secure the administration of the law. An arrest serves the function of notifying the community that an individual has been accused of a crime and also may admonish and deter the arrested individual from committing other crimes. Arrests can be made on both criminal charges and civil charges, although civil arrest is a drastic measure that is not looked upon with favor by the courts. The federal Constitution imposes limits on both civil and criminal arrests.

ARREST HOW MADE:

Section 46 of Criminal Procedure Code (hereinafter Cr.P.C) –

(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.

[(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.] {Ins. by Act 25 of 2005, S. 6 (w.e.f 23-6-2006)}

ARREST means a curtailment of personal liberty, for legal purposes. Arrest means preventing a person from having free movement by applying the authority under law.

Who can arrest

: 1. A police officer may arrest without a warrant under Cr. P.C. Sections 41 (1) to 151; under a warrant under Sections 72 to 74; under the written order of an officer in charge under Sections 55 and 157; under the orders of magistrate u/s 44 and in non cognizable offence u/s 42 Cr. P.C. 2. A superior officer u/s 36 Cr. P.C. 3. An Officer-in-Charge of a Police Station u/s 42 (2) and 157 Cr. P.C. 4. A magistrate u/s 44 Cr. P.C. 5. A military officer u/s 130 and 131 Cr. P.C. 6. A private person without warrant u/s 43 Cr. P.C., with warrant u/s 72 and 73, under order of a Police officer u/s 37 and under order of a magistrate u/s 37 and 44 Cr. P.C. and also 60 (1) Cr. P.C.

Powers of the Police to arrest : Sections 41, 42, 151 Cr. P.C. and a Police officer may arrest without warrant u/s 41 Cr. P.C. in the following conditions :- a. Who has been concerned in any cognizable offence b. Who has in possession, without, lawful excuse, of any house breaking weapon c. Who has been proclaimed as an offender either under Cr. P.C. or by order of the State Govt. d. Who is in possession of any stolen property e. Who obstructs a police officer while in the execution of his duty or who has escaped, or attempts to escape, from lawful custody f. Who is reasonably suspected of being a deserter from any of the Armed forces of the Union g. Who has been concerned in any law relating to extradition h. Who, being a released convict commits a breach of any rule made under sub-section (5) of Section 356 Cr. P.C. (i) For whose arrest any requisition has been received from another police officer specifying the person to be arrested and the offence and other cause for which the arrest is to be made.

RIGHTS OF ARRESTED PERSON:

Article 22 of the Constitution provided certain fundamental rights for the arrested persons –

a. Right to know the grounds of his arrest

b. Right to consult the lawyer of his choice

c. Right to be defended through a counsel d. Right to be produced before the magistrate within 24 hours of arrest

e. Right not to be detained beyond 24 hours

f. Right to a corresponding duty of the police officer to procure a direction from the Magistrate if the detention is needed beyond 24 hours. In a JUDGEMENT the Supreme Court of India recognised some more rights of an arrested person under Articles 21 and 22 (2) of the Constitution of India – g. Right to communicate the information of arrest to a friend, relative or well wisher.

h. Right to consult a lawyer

i. Right to be informed about his right to seek information to relative friends, well wisher through the police j. Right to a corresponding duty that a police officer has to record the details of the person to whom the information about the arrest is given, in a diary.

Besides, the arrested person must be produced before a registered medical officer for treatment and checkup immediately after arrest.

There are two types of rights of arrested person: -

(i) At the time of arrest

(ii) At the time of trial

In India accused have more rights as compared to victim: -

(a) Right to be informed of ground of arrest.

Section 50 (1) of Cr. P.C.: *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.*

Object: – It is one of the principles of natural justice.

(b) Obligation of person making arrest to inform about the arrest etc. to a nominated person.

Section 50 A of Cr. P.C.: *[(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where as may be disclosed or nominated by the arrested person for the purpose of giving such information.*

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the Magistrate before whom such arrested person produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.]

(c) Right to be informed of right to bail.

Section 50 (2) of Cr. P.C.: *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.*

(d) Right to be produced before the Magistrate without delay.

Section 56 of Cr. P.C.: *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.*

(e) Right of not being detained for more than twenty-four hours.

Section 76 of Cr. P.C.: *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.

(f) Right of not being detained for more than twenty-four hours without judicial scrutiny.

Section 57 of Cr. P.C.: *No police officer shall detain in custody a person arrested without warrant for a longer period than under all circumstances of the case is reasonable, and such period shall not, in the absence of 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.*

Arrest has far reaching consequences; the social status and dignity of an individual suspect becomes at stake, even his discharge cannot blot out the stigma consequent upon arrest. There are financial implications for the arrested person and his family. The public suffers its repercussion as we. Naturally, it needs to be ensured that arrests are not effected in a frivolous manner and that the rights of arrested persons are fully guaranteed. Towards this effect, The Cr.P.C. lays down safeguards such that the rights of persons enshrined in Art. 21 and 22(1) are not violated. However, it has been some time before the statutory provisions have been understood in all its implication and they have been given effect to. Mostly the criminal administration system ignores such safeguards and the judiciary for quite some time has been lax about ensuring the proper observance of prisoner's rights. So there have been many later declarations and statutory enactments which reaffirm the faith in the rights of arrested persons. The endeavor is to look into various rights of arrested persons, enshrined in statutes, conventions and judicial pronouncements

- **Provision for Bail under the Code**

The system that governs the status of individuals charged with committing crimes, from the time of their arrest to the time of their trial, and pending appeal, with the major purpose of ensuring their presence at trial.

In general, an individual accused of a crime must be held in the custody of the court until his or her guilt or innocence is determined. However, the court has the option of releasing the individual before that determination is made, and this option is called bail. Bail is set by the judge during the defendant's first appearance. For many misdemeanors, bail need not be set. For example, the defendant may be released on the issuance of a citation such as a ticket for a driving violation or when booked for a minor misdemeanor at a police station or jail. But for major misdemeanors and felonies, the defendant must appear before a judge before bail is determined.

The courts have several methods available for releasing defendants on bail. The judge determines which of these methods is used. One alternative is for the defendant to post a bail bond or pledge of money. The bond can be signed by a professional surety holder, the accused, or the family and friends of the accused. Signing the bail bond is a promise that the defendant will appear in the specified criminal proceeding. The defendant's failure to appear will cause the signers of the

bond to pay to the court the amount designated. The amount of bail is generally an amount determined in light of the seriousness of the alleged offense.

A defendant can also be released upon her or his own recognizance, which is the defendant's written, uninsured promise to return for trial. Such a release occurs only if the suspect has steady employment, stable family ties, and a history of residence in the community. Willful violation of the terms of a personal recognizance constitutes a crime.

Other conditions may also be set regarding the release of the defendant. The Bail Reform Act of 1984 (18 U.S.C.A. §§ 3141–3150) provided for many additional conditions that do not rely upon finances and that reflected current trends to move away from financial requirements for freedom. These conditions came about, in part, owing to concerns regarding the discriminatory nature of bail toward the poor. The Bail Reform Act allows for conditional releases dependent upon such circumstances as maintaining employment, meeting curfews, and receiving medical or psychiatric treatment.

Section 436 Cr. P.C. provides that when a person is arrested in a bailable case, bail is a right to the arrested person. Section 437 Cr. P.C. – It relates to non bailable offences. Section 438 Cr. P.C. directions for grant of bail to person apprehending arrest. When any person has reason to believe that the may be arrested on an accusation of having committed a nonbailable offence, he may apply to the High Court or Court of Sessions for a direction under this section, and that Court may, if it thinks fir, direct that in the event of such arrest, he shall be released on bail. Section 439 Cr. P.C. – Special powers of High Court or Court of Sessions regarding bail. The directions of the Supreme Court should strictly be followed in the matter of arrest of any person under any law

Anticipatory Bail

Section 438 of the CrPC enables the superior courts to grant anticipatory bail. An anticipatory bail can be applied for when the person has reason to believe that he/ she may be arrested. An application for anticipatory bail can be made to the Sessions Court, the High Court or even the Supreme Court. However, normally it is to be presumed that the Court of Sessions would be first approached for grant of anticipatory bail. The court may consider the following aspects when considering an application for anticipatory bail:

(i) the nature and gravity of accusation;

(ii) the antecedents of the applicant;

(iii) The possibility that the accused may flee from justice; and

(iv) The accusation appears to be aimed at humiliating the applicant.

The CrPC has not given any test or criterion to determine cognizable or non-cognizable offences. The First Schedule of CrPC, however, indicates that all offences punishable with imprisonment for not less than three years are taken as serious offences and are treated as cognizable. Offences such as murder, robbery, dacoity, rape and kidnapping are cognizable offences. Offences relating to marriage including bigamy and adultery are punishable with more than five years imprisonment, yet they have been included in the category of non-cognizable offences. Other offences though serious have been considered as non-cognizable only.

(i) such person shall not be so released if there appears 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 has 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.

(iii) Provided that the Court may direct that a person referred to in clause (1) of 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:

(iv) 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:

(v) 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 he shall comply with such directions as may be given by the Court.

(vi) 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 no reasonable grounds for believing that the accused has committed a non-bailable offence, but 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

(vii) 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 abatement 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

(viii) 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 otherwise in the interests of Justice.

(ix) An officer or a Court releasing any person on bail under sub-section (1) or subsection

(2), shall record in writing his or its reasons or special reasons, for so doing.

(x) Any Court which has released a person on bail under sub-section (1) or subsection

(2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(xi) If, in any case triable by a Magistrate, the trial of a person accused of any nonbailable 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.

(xii) If, at any time, after the conclusion of the trial of a person accused of a nonbailable 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 delivery.

- **Process to Compel Appearance of Person**

Summons

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.

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.

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)

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.

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. 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.

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. 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

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

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

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

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.

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.

Notification of substance of warrant

The police officer or other person executing not a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

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 brings 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.

Where warrant may be executed

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

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

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.

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

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 Proclamation and attachment

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—

(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.

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:

(2) 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

Other rules regarding processes

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

- **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

- **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

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

- **Process to Compel Production of Things**

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.

- **Search-warrants**

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

—General provisions relating to searches

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

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)

- **Condition Requisites for Initiation of Proceeding**

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

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

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.

- **Complaint to Magistrate**

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.

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

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

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.

- **Commencement of Proceeding before Magistrate**

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.

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.

UNIT-III: TRIAL PROCEEDINGS

❖ Framing of Charges and Joinder of Charges

As per Wharton's law Lexicon, Charge means to prefer an accusation against someone. To charge a person means to accuse that person of some offence. However, charge is not a mere accusation made by a complainant or an informant. A charge is a formal recognition of concrete accusations by a magistrate or a court based upon a complaint or information against the accused. A charge is drawn up by a court only when the court is satisfied by the prima facie evidence against the accused.

The basic idea behind a charge is to make the accused understand what exactly he is accused of so that he can defend himself. A charge gives the accused accurate and precise information about the accusation against him.

One basic requirement of a fair trial in criminal jurisprudence is to give precise information to the accused as to the accusation against him. This is vitally important to the accused in the preparation of his defence. In all trials under the Criminal Procedure Code the accused is informed of the accusation in the beginning itself. In case of serious offences the Code requires that the accusations are to be formulated and reduced to writing with great precision & clarity.

It is a basic principle of law that when a court summons a person to face a charge, the court must be equipped with at least prima facie material to show that the person being charged is guilty of the offences contained in the charge. Thus, while framing a charge, the court must apply its mind to the evidence presented to it and must frame a charge only if it is satisfied that a case exists against the accused.

Charge serves the purpose of notice or intimation to the accused, drawn up according to specific language of law, giving clear and unambiguous or precise notice of the nature of accusation that the accused is called upon to meet in the course of trial.

According to Section 2(b) of Cr P C, when a charge contains more than one heads, the head of charges is also a charge. Section 211 & Section 212 specifies about Contents of Charge and mentioning of particulars as to time and place of the alleged offence in the charge.

The initial requirement of a fair trial in criminal cases is a precise statement of the accusation. The code seeks to secure this requirement, first, by laying down in Sections 211 to 214 of Cr P C as to what a charge should contain; next, stipulating in Section 218 of CrPC that for every distinct offence there should be a separate charge; and lastly, by laying down in the same section that each charge should be tried separately, so that what is sought to be achieved by the first two rules is not nullified by a joinder of numerous & unconnected charges.

(i) Form of a Charge

Section 211 specifies the contents of a Charge as follows:

1. Every charge under this Code shall state the offence with which the accused is charged.
2. If the law that creates the offence gives it any specific name, the offence may be described in the charge by that name only.
3. If the law that 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.

A charge must list the offence with which the person is charged. It must specify the law and the section against which that offence has been done. For example, if a person is charged with Murder, the charge must specify Section 300 of Indian Penal Code. If the law gives a name to that offence, the charge must also specify that name and if the law does not specify any name for that offence, the charge must specify the detail of the offence from the definition of the offence so that the accused is given a clear idea of it.

In many cases, on offender is given a bigger sentence for subsequent offence. In such cases, the charge must also state the date and place of previous conviction so that a bigger punishment may be given.

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.

Time and Place of the offence

Further, as per section 212, the charge must also specify the essential facts such as time, place, and person comprising the offence. For example, if a person is charged with Murder, the charge must specify the name of the victim and date and place of the murder. In case of *Shashidhara Kurup* v. *Union of India* 1994, no particulars of offence were stated in the charge. It was held that the particulars of offence are required to be stated in the charge so that the accused may take appropriate defence. Where this is not done and no opportunity is afforded to the accused to defend his case, the trial will be bad in law for being violative of the principles of natural justice.

It is possible that exact dates may not be known and in such cases, the charge must specify information that is reasonably sufficient to give the accused the notice of the matter with which

he is charged. In cases of criminal breach of trust, it will be enough to specify gross sum or the dates between which the offence was committed.

Manner of committing the offence

Sometimes, even the time and place do not provide sufficient notice of the offence which a person is charged. In such situations, Section 213, mandates that the manner in which the offence was made must also be specified in the charge. It says that when the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give 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 or his public functions at a given time and place. The charge must set out the manner 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 punishment. The charge must set out the disobedience charged and the law infringed.

Effects of errors in a Charge

In general, an error in a Charge is not material unless it can be shown that the error misled the accused or that the error caused injustice. Section 215 says, "No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence 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. Court may infer from such facts that the omission to set out the manner of 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.

The above illustrations show that when the accused in not misled, the error is not material. For example, in the case of *Rawalpenta Venkalu* v. *State of Hyderabad*, 1956, the charge failed to mention the Section number 34 of IPC but the description of the offence was mentioned clearly. SC held that the section number was only of academic significance and the omission was immaterial.

Section 464 further provides that an order, sentence, or finding of a court will not 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 charges, unless in the opinion of the court of appeal, confirmation, or revision, a failure of justice has in fact happened because of it.

If such a court of appeal, confirmation, or revision find that a failure of justice has indeed happened, in case of omission, it may order that a charge be immediately framed and that the trial be recommenced from the point immediately after the framing of the charge, and in case of

error, omission, or irregularity in the charge, it may order new trial to be held upon a charge framed in whatever manner it thinks fit.

As is evident, the object of these sections is to prevent failure of justice where there has been only technical breach of rules that does not affect the root of the case as such. As held in the case of *Kailash Gir* v. *V K Khare*, *Food Inspector,* 1981, the above two sections read together lay down that whatever be the irregularity in framing the charge, it is not fatal unless there is prejudice caused to the accused.

Further, Section 216 allows the court to alter the charge anytime before the judgement is pronounced.

Section216:

(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) lf the offence stated in the altered or added charge is one for the prosecution of which previous section 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.

Thus, even if there is an error in a charge, it can be corrected at a later stage. An error in a charge is not important as long as the accused in not prejudiced and principles of natural justice are not violated.

According to Section 216 (1) of CrPC, any court may alter or add to any charge at any time before judgment is pronounced. The section invests a comprehensive power to remedy the defects in the framing or non-framing of a charge, whether discovered at the initial stage of the trial or at any subsequent stage prior to the judgment.

The code gives ample power to the courts to alter or amend a charge whether by the trial court or by the Appellate Court provided that the accused has not to face a charge for a new offence or is

not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it & putting forward any defence open to him, on the charge finally preferred against him[10]. The court has a very wide power to alter the charge; however, the court is to act judiciously and to exercise the discretion wisely. It should not alter the charge to the prejudice of the accused person

Difference between Charge and FIR

A First Information Report is a description of the situation and the act that constitutes a cognizable offence as given to the office in charge of a police station by any person. Such information is signed by the person giving the information. If the information is given orally, it is reduced in writing by the officer in charge, read over to the informant, and then signed by the person. The substance of this information is also entered into a register which is maintained by the officer. This is the first time when an event is brought to the attention of the police. The objective of the FIR is to put the police in motion for investigating the occurrence of an act, which could potentially be a cognizable offence.

An FIR is a mere allegation of the happening of a cognizable offence by any person. It provides a description of an event but it may not necessarily provide complete evidence. No judicial mind has to be applied while writing the FIR. However, upon receipt of an FIR, the police investigate the issue, collect relevant evidence, and if necessary, place the evidence before a magistrate.

Based on these preliminary findings of the police, the magistrate then formally prepares charges, with which the perpetrator is charged.

Thus, an FIR is one path that leads to a Charge. An FIR is vague in terms of the offences but Charge is a precise formulation of the offences committed. An FIR is a description of an event, while a Charge is a description of the offences committed in that event. An FIR may or may not name an offender but a charge is always against a person. An FIR is always of a cognizable offence, but a charge may also include a non-cognizable offence.

Joinder of charges

The initial requirement in conducting a fair trial in criminal cases is a precise statement of the charges of the accused. This requirement is ensured by CrPC through Sections 211 to 214, which define the contents of a charge. Precise formulation of charges will amount to nothing if numerous unconnected charges are clubbed together and tried together. To close this gap,

Section 218 enunciates the basic principle that for every distinct offence there should be a separate charge and that every such charge must be tried separately.

The object of section 218 is to save the accused from being embarrassed in his defence if distinct offences are lumped together in one charge or in separate charges & are tried together[5]. Another reason is that the mind of the court might be prejudiced against the prisoner if he were tried in one trial upon different charges resting on different evidence. It might be difficult for the court trying him on one of the charges not to be influenced by the evidence against him on the other charges. The strict observance of Section 218(1) may lead to multiplicity of trials, therefore exceptions, in suitable cases, have been provided by Section 218(2) in Sections 219,220,221 & 223. The effects of non-compliance with provisions regarding charge would be considered later. It would however be useful to allude to the decision of the Supreme Court in context of non-compliance with Section 218. In every case, in which a departure from the requirements of Section 218 has occurred, the question before the courts is, whether the omission to frame the required charge has or has not in fact occasioned a failure of justice by prejudicing the accused in his defence, & whether he has thus been deprived of a fair trial.

Section 218 says thus -

(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.

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.

The object of Section 218 is to save the accused from being frustrated in his defense if distinct offences are lumped together in one charge or in multiple charges but tried in the same trial.

Another reason is that the court may become prejudiced against the accused if he were tried in one trial for multiple charges resting on different evidence since it might be difficult for the court not be get influenced on one charge by evidence against him on other charges.

It must be noted that Section 218 says "distinct offences" must be charged and tried separated. It does not say "every offence" or "each offence". It has been held in *Banwarilal Jhunjhunwala* v. *Union of India,* 1963, that "distinct offence" is different from "every offence" and "each offence". Separate charge is required for distinct offence and not necessarily for every offence or each offence. Two offences are distinct if they are not identical and are not in any way interrelated. A distinct offence may distinguished from other offences by difference in time or place of commitment, victims of the offence, or by difference in the sections of the law which make the acts as offence.

However, a strict observance to Section 218 will lead to multiplicity of trials, which is also not desirable. Therefore sections 219 to 223 provide certain exceptions to this basic rule. These are as follows -

Exception 1. Three offences of the same kind within a year - Section 219 - When a person is accused of more than one offences of the same kind within a span of twelve months, he may be charged and tried at one trial for any number of such offences not exceeding three. For example, if a person is accused of theft in three different homes in the span 12 months, he can be charged with all the three at once and tried at the same trial. The period of 12 months is counted from the occurrence of the first offence up to the last offence.

An offence is considered to be of the same kind if it is punishable by the same amount of punishment under the same section of IPC or of the local or special law. Further, if the attempt to commit an offence is an offence, then it is considered an offence of the same kind for the purpose of thissection.

Exception 2. Offences committed in the course of same transaction - Section 220(1) - If a person commits multiple offences in a series of acts that constitutes one transaction, he may be charged with and tried in one trial for every such offence. The code does not define the meaning of the term transaction. However, it is well accepted that a precise definition of transaction is not possible and even Supreme Court has not attempted to define it. In case of *State of AP* v. *Cheemalapati Ganeshwara Rao*, 1963, SC observed that, it would always be difficult to define precisely what the expression means. Whether a transaction is to be regarded as same would depend upon the facts of each case. But is is generally thought that were their is proximity of time, place, or unity of purpose and design or continuity of action in a series of acts, it may be possible that they form part of the same transaction. It is however not necessary that every one of these elements should coexist for considering the acts as part of the same transaction. For example, 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(Lurking house trespass or house breaking with an intention to commit offence punishable with imprisonment) and 497(Adultery) of the Indian Penal Code.

Exception 3 - Offences of criminal breach of trust or dishonest misappropriation of property and their companion offences of falsification of accounts - Section 220(2) - Usually the offence of criminal breach of trust or dishonest misappropriation of property is committed with the help of offence of falsification of accounts to conceal the main offence. This section allows such offences to be charged with and tried at one trial.

Exception 4 - Same act falling under different definitions of offences - Section 220(3) - If an act constitutes an offence under two or more separate definitions of any law in force, the person may be charged with and tried at one trial for each of the offences. For example, A wrongfully strikes B with a cane. This act constitutes an offence as per Section 323 (Voluntarily causing hurt) as well as Section 252 (Assault or criminal force other than on grave provocation). Thus, the person may be charged with both and tried for both the offences at the same trial.

Exception 5 - Acts forming an offence, also constituting different offences when taken separately or in groups - Section 220(4) - When several acts together constitute an offence and those acts, which taken individually or in groups, also constitute another offence or offences, the person committing those acts may be charged with and tried at one trial. For example, A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged, with and convicted of offences under sections 323(Voluntarily causing hurt), 392(Robbery) and 394(Voluntarily causing hurt while committing robbery) of the Indian Penal Code.

Exception 6 - Where it is doubtful what offence has been committed - Section 221 - If a single act or a series of acts is of such nature that it is doubtful which of the several offence the facts of the case will constitute, the accused may be charged with having committed all or any of such offences and all or any of such charges may be tried at once. Further, in such a situation, when a person is charged with an offence but according to evidence it appears that he committed another offence, he may be convicted of the offence which he is shown to have committed even if he is not charged with that offence. For example, 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.

Further, in the same case mentioned, lets say, A is only charged with theft and 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 of receiving stolen goods (as the case may be) though he was not charged with such offence.

Another illustration is as follows - 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.

Exception 7 - Certain persons may be charged jointly - Section 223 - 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.

Section 224 of CrPC states that 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. The section is applicable where the accused in convicted of one

of several distinct charges before the other charges are tried. It is necessary that the several charges made must be in respect of distinct offences and the section will not apply where the several charges are made under Sections 220(3), 220(4), or Section 221.

Conclusion

In a criminal trial the charge is the foundation of the accusation & every care must be taken to see that it is not only properly framed but evidence is only tampered with respect to matters put in the charge & not the other matters.

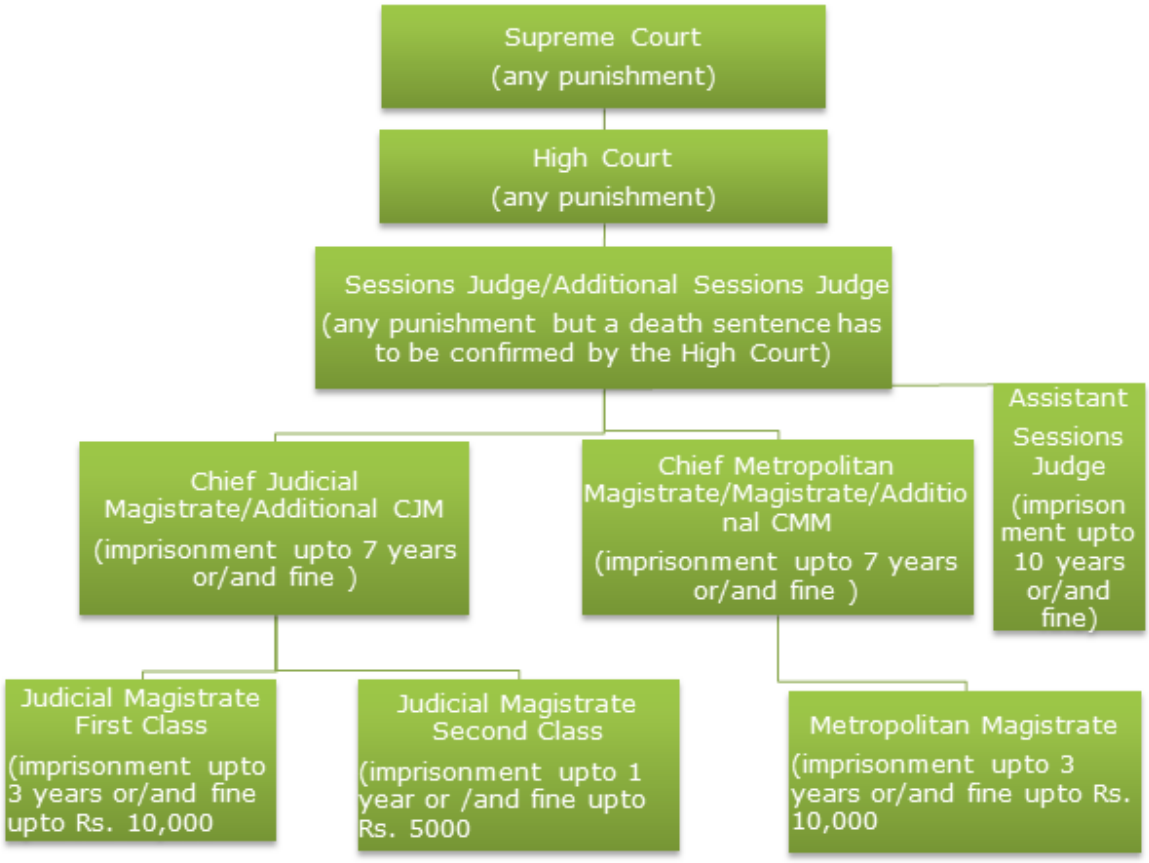
In framing a charge during a criminal trial, instituted upon a police report, the court is required to confine its attention to documents referred to under Section 173.

The judge needs to be only convinced that there is a prime facie case, where there is no necessity to adduce reasons for framing charges. However, the magistrate is required to write an order showing reasons if he decides to discharge the accused.

The sections dealing with charge do not mention who is to frame the charge. The provisions dealing with different types of trials however provide that it is always for the court to frame the charge. The court may alter/ add to any charge at any time before the judgment is pronounced.

But if a person has been charged, the court cannot drop it. He has either to be convicted or acquitted[18]. All this has an important bearing on the administration of justice.

- **Jurisdiction of the Criminal Courts in Inquiries and Trials**



Section 177 – Ordinary place of inquiry and trial

Every offence shall ordinarily be inquired inland tried by a Court within whose local jurisdiction it was committed.

Section 178 – Place of inquiry or trial

- When it is uncertain in which of several local areas an offence was committed, or
- where an offence is committed partly in one local area and partly in another, or
- where an offence is a continuing one, and continues to be committed in more local areas than one, or
- 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.

Section 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.

Section 180 – Place of trial where act is 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.

Section 181 – Place of trial in case of certain offences

- 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.
- 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.
- 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.
- 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.
- 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.

Section 187 – Power to issue summons or warrant for offence committed beyond local jurisdiction

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.

- **Types of trials: Sessions Trial, Warrant Trial, Summons Trial, Summary Trial**

Trial before a court of session

CHAPTER XVIII deals with Trial before a court of session. Section 225 states that every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

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.

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

The order of discharge should be supported by reasons; *Sunil Kumar Jha alias Bittu Jha* v *State of Bihar*, (1997) 2 Crimes 131 (Pat)

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

Conviction on plea of guilty -

If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

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.

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.

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.

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).

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.

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.

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.

(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).

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.

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.

Trial of warrant cases by magistrates

Cases instituted on a police report 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.

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.

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.

Conviction on plea of guilty -

If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

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.

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.

Cases instituted otherwise than on police report. 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.

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 ground.

Trial of summons - cases by Magistrates

CHAPTER XX deals with Trial of summons - cases by Magistrates. 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.

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.

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.

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.

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.

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.

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).

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.

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.

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.

Summary Trials

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 offences mentioned therein in the Code.

(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.

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.

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.

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.

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.

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.

- **Judgement and Sentences under the Code**

  CHAPTER XXVII deals with the Judgment. 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.

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).

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.

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.

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 subsection (3) of section 374, a brief statement of the reasons for the decision.

❖ **Submission of Death Sentences for Confirmation**

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. If 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. 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.

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.

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.

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.

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.

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.

❖ General Provisions as to Inquiries and Trial

CHAPTER XXIV deals with the general provisions as to inquiries and trials. 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 subsection (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.

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.

- **Execution, Suspension, Remission and Commutation of Sentences**

CHAPTER XXXII deals with Execution, suspension, remission and commutation of sentences.

A—Death sentences

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.

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.

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.

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.

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

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.

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.

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.

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

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, authorizing him to realize 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 realize 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.

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).

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.

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.

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 instalments, 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 instalment thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be, is not realized 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

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.

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.

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.

UNIT-IV: MISCELLANEOUS

- **APPEALS**

CHAPTER XXIX deals with APPEALS.

APPEALS & ITS LIMITATION PERIOD

INTRODUCTION:-Appeal is an important remedy for person's dissatisfied from judgment finding and orders of the trial court. Under section 372 of the Cr.P.C., it is provided that relation to appeal it is necessary to know that no appeal shall lie from any judgment or order of a criminal court except as provided by this code or any other law for time being in force, caseGarikapati v/s Subhash coudhari-1957. However the provisions regarding making an appeal are the following:-

1. Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behavior: - Any person who has been ordered to give security for keeping the peace or for good behavior or who is aggrieved by any order refusing to accept or rejecting a surety on the basis ofsec.373.

2. Appeals from Convictions: - According to section 374 of code that any person convicted on a trial by a H/C in its extraordinary original criminal jurisdiction may appeal to Supreme Court similar any person convicted by session judge or on a trial held by any other court which sentence or imprisonment is more than 7 years may appeal to High court. Case Panchi v/s State of U.P.-1998, *In C.Gopinathan v/s State of Kerala-1991*

3. Appeal by State against sentence: - Under sec.377, the state Government may in any case of conviction on a trial held by any court other than a H/C direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy to Court of Session if the sentence is passed by the Magistrate or to the H/C if the sentence is passed by any other Court. When an appeal is filed against the sentence on the ground of its inadequacy court shall not enhance the sentence except after giving to the accused a reasonable opportunity of sowing cause against such enhancement. *Case of Nadir Khan v/s State-1976.*

4. Appeal in case of Acquittal :- In an appeal against acquittal undersec.378 the H/C has full power to review at large the evidence on which the acquittal is based and to reach the conclusion that the order of acquittal should be reversed as held in case of Mohandas v/s State of MP-1973, but exercising his power the H/C should give proper weight and consideration to the view of the trial judge as to the credibility of witnesses, presumption of innocence in favour of the accused. And a right of the accused to the benefit of any doubt. It was also held in State of U.P. v/s Gambir Singh-2005 case of appeal against acquittal if on same evidence two views are possible, the one in favour of accused must be preferred.

During the hearing of appeal from the order of acquittal it should be taken into consideration that there is no miscarriage of justice, case *Allahrakha K. Mansuri v/s State of Gujrat-2002*. The order of acquittal cannot be dismissed merely on the ground that a second approach could have been applied in the case and it means that the accused could have been convicted on considering another view a case of Chandra Singh v/s State of Gujrat-2002.

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.

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 behavior, 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.

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.

(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.

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

❖ REFERENCE AND REVISION

CHAPTER XXX deals with REFERENCE AND REVISION.

REFERENCE AND REVISION Reference is a process in which an inferior court consults the High Court on a matter of law in certain circumstances. If a criminal court other than a High Court has to decide

whether a particular enactment is constitutionally valid, and is itself of opinion that it is not, but finds that neither the High Court to which the court is subordinate nor the Supreme Court has pronounced on that encashment, the court is required to make a reference to the High Court for the decision on that question. The intention here is that the validity of st the laws possibly in conflict with the constitution should be decided authoritatively and quickly.

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.

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. 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.

(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.

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.

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).

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 subsection (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.

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).

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.

- **REVISION**

The right of appeal is not available in each and every case and is confined to such cases as are specifically provided by law. Secondly, even in such specified cases, the code ordinarily allows only one appeal, and a review of the decisi9n of the appellate court is not normally permissible by way of further appeal to yet another higher court. In order to avoid the possibility of any miscarriage of justice in cases where no right of appeal is availabre, the code has devised another review procedure namely revision. The powers of

revision conferred on the higher courts are very wide and are purely discretionary in nature. Therefore, no party has any right as such to be heard before any court exercising such powers.

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.

CASE LAWS:

(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.

DIFFERENCE BETWEEN APPEAL & REVISION

APPEAL	REVISION
Any person convicted on a trail held by H/C may appeal to S/C. Any person convicted on a trial by a Session judge or on a trial held by any other court for more than 7 years may appeal to the High Court 3. Any person convicted on a trial held by metropolitan Magistrate or Magistrate Ist. Class may appeal to Session Judge. 4. If the appellant is in jail he present his petition of appeal through Officer I/c jail. 5. Pending an appeal by accused person the appellate court shall suspend the execution of order of sentence & if he is in confinement he	The correctness, legality or proprietary of any finding sentence or order of any lower court. The regularity of any proceedings of such court. The powers of revision cannot be used through interlocutory orders. During the hearing of Revision argue of the person applying for revision should be considered seriously even though it they are too brief. Case Pal George v/s state-02.

be released on bail.	

❖ INHERENT POWERS OF COURT

The essential object of criminal law is to protect society against criminals and law- breakers. For this purpose, the law holds out threats of punishments to prospective lawbreakers as well as attempts to make the actual offenders suffer the prescribed the punishment for their crimes. Therefore, criminal law, in its wider sense, consists of both the substantive criminal law as well as the procedural criminal law. Substantive criminal law defines offences and prescribes punishments for the same, while the procedural law is to administer the substantive law.

Our legal system's law of crime is mainly contained in the Code of Criminal Procedure, 1973 which has come into force from April 1, 1974. It provides the machinery for the detection of crime, apprehension of suspected criminals, collection of evidence, determination of the guilt or innocence of the suspected person and the imposition of suitable punishment on the guilty person. In addition, this Code also deals with the prevention of offences (Sections 106- 124, 129- 132 and 144- 153), maintenance of wives, children and parents (Sections 125- 128) and public nuisances (Sections 133- 143).

The Code also controls and regulates the working of the machinery set up for the investigation and trial of offences. On the one hand it has to give adequately wide powers to make the investigation and adjudicatory processes strong, effective and efficient, and on the other hand, it has to take precautions against errors of judgment and human failures and to provide safeguards against probable abuse of powers by the police or judicial officers. This often involves a "nice balancing of conflicting considerations, a delicate weighing of opposing claims clamoring for recognition and the extremely difficult task of deciding which of them should predominate".

The Code has obviously tried to make itself exhaustive and complete in every respect; and it has generally succeeded in this attempt. However, if the Court finds that the Code has not made specific provision to meet the exigencies of any situation, the court of law has inherent power to mould the procedure to enable it to pass such orders as the ends of justice may require.

It has however been declared by the Supreme Court that the subordinate courts do not have any inherent powers. The High Court has inherent powers and they have been given partial statutory recognition by enacting Section 482 of this Code.

Background of Section 482:-

The power to quash an FIR (First Information Report) is among the inherent powers of the High Courts of India. Courts possessed this power even before the Criminal Procedure Code (CrPC) was enacted. Added as Section 482 by an amendment in 1923, it is a reproduction of the section 561(A) of the 1898 code. Since high courts could not render justice even in cases in which the illegal was apparent, the section was created as a reminder to the courts that they exist to prevent injustice done by a subordinate court.

"Nothing in this code shall be deemed to limit or effect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice"

Exercise of power under Section 482 Cr.P.C. is the exception and not rule – Inherent jurisdiction of High Court under Section 482 Cr.P.C. may be exercised :-

1. To give effect to an order under the Code.

2. To prevent abuse of the process of Court.

3. To otherwise secure the ends of justice.

According to Sec 26 of CrPC 1973 Offences below the Criminal Procedure Code (hereinafter the CrPC) are divided into:

1. Offences under Indian Penal Code (IPC) (triable by HC Sessions Court and other court shown in the 1st Schedule to the CrPC)

2. Offences under any other law (empowers HC when no court is mentioned for any offence under any law other than IPC to attempt such offences)

S482 deals with Inherent powers of the Court. It is under the 37th Chapter of the Code titled Miscellaneous.

It comes into action when the court acts judicially and passes an order. If order is passed by Executive officer of State in administrative capacity it has no application. Therefore persons aggrieved by such order cannot arrive to HC to exercise its inherent power under this section. As the Inherent powers are vested in HC by law within meaning of Art 21 of Constitution consequently any order of HC in violation of any right under Art 21 is not ultra vires.

Eg. Cancelling of bail bond by HC thereby depriving a person's personal liberty.

Purpose behind its incorporation:-

This section makes it clear that the provisions of the Code are as intended to limit or affect the inherent powers of the High Courts. Obviously the inherent power can be exercised only for either of the three purposes specifically mentioned in the section. This inherent power cannot naturally be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provision of the Code that Section 482 can come into operation, subject further to the requirement that the exercise of such power must serve either of the three purposes mentioned in the said section. In prescribing rules of procedure legislature undoubtedly attempts to provide for all the cases that are likely to arise; but it is not possible that any legislative enactment dealing with the procedure, however carefully it may be drafted, would succeed in providing for all the cases that may possibly arise in the future.

Lacunae are sometimes discovered in procedural law and it is for the purpose of covering such lacunae and dealing with such cases where such lacunae are discovered that procedural law invariably recognizes the existence of inherent powers in courts.

Here it is extremely important to be noticed that it is only the High Court whose inherent power has been recognized by Section 482, and even in regard to the High Court's inherent power definite statutory safeguards have been laid down as to its exercise.

It is only where the High Court is satisfied either that an order passed under the Code would be rendered ineffective or that the process of any court would be abused or that the ends of justice would not be secured that the High Court can and must exercise its inherent powers under Section 482 of this Code.

It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases which may possibly arise.

It has also been held that Section 482 cannot be invoked in non- criminal proceedings such as those under the Customs Act.

"Inherent jurisdiction", "to prevent abuse of process", "to secure the ends of justice" are terms incapable of definition or enumeration, and capable at the most of test, according to well established principles of criminal jurisprudence. "Process" is a general word meaning in effect anything done by the court. The framers of the Code could not have provided all the cases that should be included within the meaning of abuse of process of court. It is for the court to take decision in particular cases.

Conditions for Use of Inherent Power:-

There are several conditions laid down by various cases that indicate the circumstances under which this inherent power may be used. These conditions may be enumerated as follows:

1. The jurisdiction is completely discretionary. The High Court can refuse to use the power.

2. The jurisdiction is not limited to cases that are pending before the High Court. It can consider any case that comes to its notice (in appeal, revision or otherwise).

3. This power can be invoked only in an event when the aggrieved party is being unnecessarily harassed and has no other remedy open to it.

4. The High Court, under section 482, does not conduct a trial or appreciate evidence. The exercise of this power (although it has a wide scope) is limited to cases that compel it to intervene for preventing a palpable abuse of a legal process.

5. The High Court has the power to provide relief to the accused even if s/he has not filed a petition under section 482.

6. This power cannot be exercised if the trial is pending before the apex court and it has directed the session judge to issue a non- bailable warrant for arresting the petitioners.

7. The power under Section 482 is not intended to scuttle justice at the threshold but to secure justice.

8. This power has to be exercised sparingly with circumspection and in the rarest of rare cases, but cannot be held that it should be exercised in the rarest of rare cases – The expression rarest of rare case may be exercised where death penalty is to be imposed under Section 302 of IPC but this expression cannot be extended to a petition under Section 482 CrPC.

9. So long as inherent power of Section 482 CrPC is in statute, the exercise of such power is not impermissible.

10. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice.

11. Where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal.

12. In proceedings instituted on complaint, exercise of inherent powers under Section 482 CrPC to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same.

13. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

14. All Courts, whether civil or criminal possess, in the absence of any express provisions, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice.

"To prevent abuse of process of any court"

Ordinarily HC will not interfere at an interlocutory stage of criminal proceeding in subordinate court but, HC is under an obligation to interfere if there is harassment of any person (Indian citizen) by illegal prosecution. It would also do so when there is any exceptional or extraordinary reasons for doing so.

Test to determine whether there has been an abuse of any court are:-

1. See whether a bare statement of facts of case would be sufficient to convince HC if it is a fit case for interference at intermediate stage.

2. Whether in the admitted circumstances it would be a mock trial if case is allowed to proceed.

Reasons HC can interfere:

1. Long lapse of time

2. Failure or impossibility to supply to accused, copies of police statements and other relevant documents- grounds for other relevant documents- grounds for HC to quash proceedings against accused.

"To secure ends of justice"

Eg. When a clear statutory provision of law is violated- HC can interfere. It is of vital importance in the administration of justice, and ensure proper freedom and independence of Judges must be maintained and allowed to perform their functions freely and fearlessly without undue influence on anyone, even SC. At the same time Judges and Magistrate should act with a certain amount of justice and fair play.

The SC in Madhu Limaye v. Maharashtra, has held the following principles would govern the exrcise of inherent jurisdiction of the HC:

1. Power is not to be resorted to if there is specific provision in code for redress of grievances of aggrieved party

2. It should be exercised sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice

3. It should not be exercised against the express bar of the law engrafted in any other provision of the code.

It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court.

Guidelines:-

The inherent powers contemplated by Section 482 has to be used sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself.

The Supreme Court has reiterated the nature of its power thus:

"The powers conferred on the High Court under Article 226 and 227 of the Constitution and under Section 482 of the Code of Criminal Procedure have no limits but more the power more the cases and caution is to be exercised while invoking these powers. When the exercise of

powers could be under Article 227 or Section 482 of the Code, it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles of Articles 226 and 227 may be referred to."

The following cases have been stated by the Supreme Court, by way of illustration wherein the extraordinary power under Article 226 or inherent power under Section 482 can be exercised by the High Court to prevent abuse of process of any court or to secure justice:

1. Where the allegations in the FIR/complaint, even if they are taken at their face value do not prima facie constitute any offence against the accused.

2. Where the allegations in the FIR or other materials do not constitute a cognizable offence justifying an investigation by the police under Section 156(1) of the code except under an Order of a Magistrate within the purview of Section 155(2).

3. Where the uncontroverted allegations in the FIR/complaint and the evidence collected thereon do not disclose the commission of any offence.

4. Where the allegations in the FIR or other materials do not constitute a cognizable offence but constitute a non- cognizable offence to which no investigation is permitted by the police without Order of a Magistrate under Section 155(2).

5. Where the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or statute concerned (under which the proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or in the statute concerned, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide intention and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused with a view to spite him due to private and personal vengeance.

The Courts have been following these in dealing with requests for quashing criminal proceedings. The following principles in relation to the exercise of the inherent power of the High Court have been followed ordinarily and generally, almost invariably, barring a few exceptions:

1. That the power is not to be resorted to if there is a specific provision in the Code itself for the redress of the grievance of the aggrieved party;

2. That it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;

3. That it should to be exercised as against the express bar of law engrafted in any other provision of the Code

- **TRANSFER OF CRIMINAL CASES**

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.

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.

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.

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).

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.

❖ PLEA BARGAINING

Plea bargaining is essentially derived from the principal of 'Nalo Contendere' which literary means 'I do not wish to contend'. The Apex Court has interpreted this doctrine as an "implied confession, a quasi confession of guilt, a formal declaration that the accused will not contend, a query directed to the court to decide a plea guilt, a promise between the Government and the accused and a government agreement on the part of the accused that the charge of the accused must be considered as true for the purpose of a particular case only. It has been introduced in the criminal procedure code in the chapter XXI A wide criminal law (amendment) Act 2005.This has change the prospect & the face of the criminal justice system. It is not applicable in cases where the offence is committed against a women or a child below the age of 14 years. Also once the court passes an order in the case of plea bargaining, no appeal shall lie to any court against the order.

"Plead Guilty or bargain for lesser sentence" is the straight & shortest possible meaning of plea bargaining. Plea bargaining refers to pre - trail negotiation between the defendant usually conducted by the counsel & the prosecution during which the defendant agrees to plead guilty in the exchange for certain concessions by the prosecutor. Plea bargaining is the result of modern judicial thinking before the introduction of plea bargaining most courts used to ignore Plea Bargaining. The concept of Plea Bargaining was not recognized in jurisprudence of India. However accused used to plead guilty only for petty offences & pay small fine whereupon the case is closed. Initially the concept of Plea Bargaining was opposed by the legal experts, judiciary etc.

The law commission of India advocated the introduction of Plea Bargaining in the 142th, 154th & 177th reports. The 154th report of the Law commission recommended the new XXI A to be incorporated in the criminal procedure code. Based on recommendation of the Law Commission, the new chapter on plea bargaining making plea bargain in cases of offences punishable with imprisonment up to seven years has been included.

RELEVANT PROVISION & PROCEDURE FOR PLEA BARGAINING

- As Per **Section 265-A,** the plea bargaining shall be available to the accused who is charged of any offence other than offences punishable with death or imprisonment or for life or of an imprisonment for a term exceeding to seven years. Section 265 A (2) of the Code gives power to notify the offences to the Central Government. The Central Government issued Notification No. SO1042 (II) dated 11-7/2006 specifying the offences affecting the socioeconomic condition of the country.
- **Section 265-B** contemplates an application for plea bargaining to be filed by the accused which shall contain a brief details about the case relating to which such application is filed, including the offences to which the case relates and shall be accompanies by an affidavit sworn by the accused stating therein that he has voluntarily preferred the application, the plea bargaining the nature and extent of the punishment provided under the law for the offence, the plea bargaining in his case that he has not previously been convicted by a court in a case in which he had been charged with the same offence. The court will thereafter issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused for the date fixed for the plea bargaining. When the parties appear, the court shall examine the accused in-camera wherein the other parties in the case shall not be present, with the motive to satisfy itself that the accused has filed the application voluntarily.
- **Section 265-C** prescribes the procedure to be followed by the court in working out a mutually satisfactory disposition. In a case instituted on a police report, the court shall issue notice to the public prosecutor concerned, investigating officer of the case, and the victim of the case and the accused to participate in the meeting to work out a satisfactory disposition of the case. In a complaint case, the Court shall issue notice to the accused and the victim of the case.
- **Section 265-D** deals with the preparation of the report by the court as to the arrival of a mutually satisfactory disposition or failure of the same. If in a meeting under section 265-C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding office of the Courts and all other persons who participated in the meeting. However, if no such disposition has been worked out, the Court shall record such observation and proceed further in

accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265-B has been filed in such case.

- **Section 265-E** prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out. After completion of proceedings under S. 265 D, by preparing a report signed by the presiding officer of the Court and parities in the meeting, the Court has to hear the parties on the quantum of the punishment or accused entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of S. 360 of the Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force, or punish the accused, passing the sentence. While punishing the accused, the Court, as its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offences committed by the accused or if such minimum punishment is not provided, can pass a sentence of one fourth of the punishment provided for such offence. " Section 265-F deals with the pronouncement of judgment in terms of mutually satisfactory disposition.
- **Section 265-G** says that no appeal shall be against such judgment.
- **Section 265-H** deals with the powers of the court in plea bargaining. A court for the purposes of discharging its functions under Chapter XXI-A, shall have all the powers vested in respect of trial of offences and other matters relating to the disposal of a case in such Court under the Criminal Procedure Code.
- **Section 265-I** specifies that Section 428 is applicable to the sentence awarded on plea bargaining.
- **Section 265-J** talks about the provisions of the chapter which shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code and nothing in such other provisions shall be construed to contain the meaning of any provision of chapter XXI-A.
- **Section 265-K** specifies that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose as mentioned in the chapter. " **Section 265-L** makes chapter not applicable in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

For a valid disposal on plea bargaining it is important to follow the aforesaid procedure contemplated in Chapter XXI-A. Even though 'plea bargaining' is available after the introduction of the said amendment is available, in cases of offences which are not punishable either with death or with imprisonment for life or with imprisonment for a term exceeding seven years, the chapter contemplates a mutually satisfactory disposal of the case which may also include the giving of compensation to victim and other expenses and same cannot be done without including the victim in the process of arriving at such settlement.

The Hon'ble High Court in the case of **Sh. Charan Singh v. M.C.D**. has held that no disqualification on account of conviction could be attached to petitioner as he had been released on probation. In this case, the Hon'ble Delhi High Court has quoted the case of **Trikha Ram v. V. K. Seth and Anr** wherein the Hon'ble Supreme Court held that the benefit of Section 12 of The Probation of Offenders ACT, 1958 can be extended to the service of the offender.

Plea Bargaining does not solves the entire problem but reduces its severity of penalty. The introduction of plea bargaining is a shortcut aimed at quickly reducing the number of under-trial prisoners and increasing the number of convictions, with or without justice. It is undoubtedly a disputed concept since few have welcomed it while others have abandoned it. The consequences will be felt most obviously by the countless numbers of poor languishing in the country's prisons while awaiting trial. Taking into account the advantages of plea-bargaining, the recommendations of the Law Commission Plea bargaining was clearly recognized as the need of the hour and by no stretch of imagination can the taint of legalizing a crime will attach to it. At this stage it can be safely held that 'Law is not a Panacea. It cannot solve all problems, but it can reduce the severity'. Plea bargaining in India endeavors to address the same, which despite its shortcomings can go a long way in speeding the caseload disposition and attributing efficiency and credibility to Indian Criminal Justice.

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