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Unit-I: Introduction to Trial Procedures

(a) The charge

As per Wharton's law Lexicon, Charge means to prefer an acusation against some one. 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. A charge is written in the language of the court and the fact that the charge is made means that every legal condition required by law to constitute the offence charged is fulfilled in the particular case.

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. In the case of **State vs Ajit Kumar Saha 1988**, the material on record did not show a prima facie case but the charges were still framed by the magistrate. Since there was no application of mind by the magistrate, the order framing the charges was set aside by the High Court.

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.

(i) Form of a Charge

Section 211 specifies the contents of a Charge as follows **[ONDSLP]** -
(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 vs 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

Some times, even the time and place do not provide sufficient notice of the offence which 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 vs 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 the section number was only of acedemic significance and the ommission 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 vs 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.

Section 216:
(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.

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 occurance 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 investigates the issue, collects relevant evidence, and if necessary, places the evidence before a magistrate. Based on these preliminary findings of the police, the magistrate then formally prepares a 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.

(ii) 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.

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 vs Union of India AIR 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 occurance 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 this section.

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 vs Cheemalapati Ganeshwara Rao, AIR 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 (Assult or criminal force otherthan 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.

(b)Evidence in inquiries and trials

A—Mode of taking and recording evidence

Language of Courts -

The State Government may determine what shall be, for purposes of this Code, the language of each Court within the State other than the High Court.

Evidence to be taken in presence of accused.

Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.

Explanation— In this section "accused" "includes a person in relation to whom any proceeding under Chapter Viii has been commenced under this Code.

274. Record in summons-cases and inquiries.

(1) In all summons-cases tried before a Magistrate, in all inquiries under sections 145 to 148 (both inclusive), and in all proceedings under section 446 otherwise than in the course of a trial, the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of the evidence in the language of the Court:

Provided that if the Magistrate is unable to make such memorandum himself, he shall after recording the reason of his inability, cause such memorandum to be made in writing or from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the record.

Record in warrant-cases.

(1) In all warrant-cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open Court or, where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

(2) Where the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub-section (1).

(3) Such evidence shall ordinarily be taken down in the form of a narrative, by the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(4) The evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Language of record of evidence.

In every case where evidence is taken down under section 275 or section 276,—

(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or Presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or Presiding Judge, and shall form part of the record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

Procedure in regard to such evidence when completed.

(1) As the evidence of each witness taken under section 275 or section 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.

(3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands.

Observation:

Object of section 278 is not intended to permit a witness to resile from his statement in the name of correction; Mir Mohd. Omar v. State of West Bengal, (1989) Cr LJ 2070: AIR 1989 SC 1875.

Interpretation of evidence to accused or his pleader.

(1) Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Remarks respecting demeanour of witness.

When a Presiding Judge or magistrate has recorded the evidence of a witnesses, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Record of examination of accused.

(1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.

(2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the Presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

(3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable in the language of the Court.

(4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(5) It shall thereafter be signed by the accused and by the Magistrate or Presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

Interpreter to be bound to interpret truthfully.

When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Record in High Court.

Every High Court may, by general rule, prescribe the manner in which the evidence of witnesses and the examination of the accused shall be taken down in cases coming before it; and such evidence and examination shall be taken down in accordance with such rule.

B—Commissions for the examination of witnesses

When attendance of witness may be dispensed with and commission issued.

(1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court of Magistrate that the examination of a witness is necessary for the ends of justice, and

that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter:

Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union Territory as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.

(2) The Court may, when issuing a commission for the examination of a witness for the prosecution direct that such amount as the Court considers reasonable to meet the expenses of the accused including the pleader's fees, be paid by the prosecution.

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 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.

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 summon 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 evidence referred to in section 244 the Magistrate considers, for reasons to be recorded that the 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 he accused at any previous stage of the case if, for reasons to be recorded Magistrate, he considers the charge to be groundless.

Evidence for defence.

The accused shall then be called upon to enter upon his defence and produce his evidence and the provisions of section 243 shall apply to the case.

(c) General provisions as to inquiries and trials

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.

(d) Provisions as to accused persons of unsound mind.

Procedure in case of accused being lunatic.

When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness and shall reduce the examination to writing.

Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330. If such Magistrate is of opinion that the person referred to in sub-section (1) is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

Procedure in case of person of unsound mind tried before Court.

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence

as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court.

Release of lunatic pending investigation or trial.

(1) whenever a person is found, under section 328 or section 329, to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

. Resumption of inquiry or trial.
(1) Whenever an inquiry or a trial is postponed under section 328 or section 329, the Magistrate or Court as the case may be, may at any time after the person concerned has ceased to be of unsound mind, resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Procedure on accused appearing before Magistrate or Court.

(1) If, when the accused appears or is again brought before the Magistrate or Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed. (2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall act according to the provisions or section 328 or section 329, as the case may be, and if the accused is found to be of unsound mind and consequently incapable of making his defence, shall deal with such accused in accordance with the provisions of section 330.

When accused appears to have been of sound mind.

When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act, which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be tried by the Court of Session, commit him for trial before the Court of Session.

Judgment of acquittal on ground of unsoundness of mind.

Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Person acquitted on such ground to be detained in safe custody.

(1) Whenever the finding states that the accused person committed the act alleged, the magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found have constituted an offence,—

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a lunatic asylum shall be made under clause (a) of sub-section (1) otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section (1) except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4) The Magistrate or Court shall report to the State Government the action taken under subsection (1).

Power of State Government to empower officer in charge to discharge.

The State Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 330 or section 335 to discharge all or any of the functions of the Inspector-General of Prisons under section 337 of section 338.

Procedure where lunatic prisoner is reported capable of making his defence.

If such person is detained under the provisions of sub-section (2) of section 330, and in the case of a person detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 332; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic detained is declared fit to be released.

(1) If such person is detained under the provisions of sub-section (2) of section 330, or section 335 and such Inspector-General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the State Government may thereupon order him to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(2) Such Commission shall make a formal inquiry into the state of mind of such person, take such evidence as is necessary, and shall report to the State Government, which may order his release or detention as it thinks fit.

Delivery of lunatic to care of relative or friend.

(1) Whenever any relative or friend of any person detained under the provisions of section 330 or section 335 desires that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct;

(c) in the case of a person detained under sub-section (2) of section 330, be produced when required before such Magistrate or Court, order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in clause (b) of sub-section (1), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the magistrate or Court, and, upon such production the magistrate or Court shall proceed in accordance with the provisions of section 332, and the certificate of the inspecting officer shall be receivable as evidence.

Unit-II: Trials and Execution Proceedings

(a) 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

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

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 crossexamination.

Acquittal –
If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal.

Comments
Once a co-accused has been discharged or acquitted, he ceases to be a co-accused and there is no impediment to summon him as a witness. He can be a witness for the prosecution as well as for the defence; *Sarbeswar Panda* v. *State of Orissa*, (1997) 2 Crimes 534 (Ori).

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.

Arguments -
When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply:

Provided that where any point of law is raised by the accused or his pleader, the prosecution may, with the permission of the Judge, make his submissions with regard to such point of law.

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.

POINTS TO REMEMBER:
(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.

(b) 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 crossexamining 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.

(C) 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 nonappearance of the complainant is due to his death.

Comments
There is no denying that the dismissal of the complaint in default under section 256 entails the acquittal of the accused. Once an accused has been acquitted of the offence, the law provides a remedy by way of an appeal against the order of acquittal under section 378 (4) of the Code; *H.P. Agro Industries Corpn. Ltd.* v. *M.P.S. Chawla*, *(*1997) 2 Crimes 591 (H&P).

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.

(d) 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.

(e) Judgement

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.

Comments
High Court in revision set aside the order of acquittal on the ground that order of the Session Court is contrary to section 353 of the Act and remanded the case for fresh hearing. The Supreme Court held that interference by High Court was not justified; *Ramu & Ram Kumar* v. *Jagannath,* 1994 Cr LJ 66 (SC).

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.

(f) 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.

(g) 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 installments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days;

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the installment thereof, as the case may be, is to be made; and if the amount of the fine or of any installment, as the case may be, is not 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-III: Review Procedures

(a) Appeals

CHAPTER XXIX deals with APPEALS.

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 behavior.

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

(b) Reference and Revisions

CHAPTER XXX deals with REFERENCE AND REVISION.
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.

CASE LAWS:

(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.

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.

Unit-IV: Miscellaneous

(a) Maintenance of wives, children and parents

Section 125 deals with the Order for maintenance of wives, children and parents,

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

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

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

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

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five

hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means
Explanation—For the purposes of this Chapter—
(a) "**minor**" means a person who, under the provisions of the Indian Majority Act, 1875
(9 of 1875) is deemed not to have attained his majority;
(b) "**wife**" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried
(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance
(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any port of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

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

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

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

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

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

Section 126talks about the Procedure

(1) Proceedings under section 125 may be taken against any person in any district—
(a) where he is, or
(b) where he or his wife resides, or
(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child

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

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

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

Alteration in allowance

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

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

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

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that— (a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage; (b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel

such order— (i) in the case where such sum was paid before such order, from the date on which such order was made, (ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman; (c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof

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

Enforcement of order of maintenance (section 125)

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

(b) 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.

(c)Irregular proceedings

CHAPTER XXXV deals with the Irregular proceedings.
Irregularities which do not vitiate proceedings.
If any Magistrate not empowered by law to do any of the following things, namely:—
(a) to issue a search-warrant under section 94;
(b) to order, under section 155, the police to investigate an offence;
(c) to hold an inquest under section 176;
(d) to issue process under section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;
(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190;
(f) to make over a case under sub-section (2) of section 192;
(g) to tender a pardon under section 306;
(h) to recall a case and try it himself under section 410; or
(i) to sell property under section 458 or section 459, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.
If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—

(a) attaches and sells property under section 83;
(b) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;
(c) demands security to keep the peace;
(d) demands security for good behaviour;
(e) discharges a person lawfully bound to be of good behaviour;
(f) cancels a bond to keep the peace;
(g) makes an order for maintenance;
(h) makes an order under section 133 as to a local nuisance;
(i) prohibits, under section 143, the repetition or continuance of a public nuisance;
(j) makes an order under Part C or Part D of Chapter X;
(k) takes cognizance of an offence under clause (c) of sub-section (1) of section 190;
(l) tries an offender;
(m) tries an offender summarily;
(n) passes a sentence, under section 325, on proceedings recorded by another Magistrate;
(o) decides an appeal;
(p) calls, under section 397, for proceedings; or
(q) revises an order passed under section 446, his proceedings shall be void.

Section 462 deals with the Proceedings in wrong place.
No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice

Non-compliance with provisions of section 164 or section 281.
(1) If any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under section 164 or section 281, is tendered, or has been received, in evidence finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such noncompliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

(2) The provisions of this section apply to Courts of appeal, reference and revision.

Effect of omission to frame, or absence of, or error in, charge.
(1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may— (a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing

of the charge. (b) in the case of an error, omission or irregularity in the charge, direct a new trial to had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

It is well-settled that where the Court frames a charge on a major Court the law does not provide that it should also frame a charge under the minor Court; *State of Maharashtra* v. *Vinayak Tukaram Utakar,* (1997) 2 Crimes 615 (Bom).

Finding or sentence when reversible by reason of error, omission or irregularity.
(1) Subject to the provisions hereinbefore contained, on finding sentence or order passed by Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Defect or error not to make attachment unlawful.
No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want or form in the summons, conviction, writ of attachment or other proceedings relating thereto.

(d) Limitations for taking cognizance

For the purposes of this Chapter, unless the context otherwise, requires, "period of limitation" means the period specified in section 468 for taking cognizance of an offence.

Bar to taking cognizance after lapse of the period of limitation.
(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be— (a) six months, if the offence is punishable with fine only;
(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

(i) Once the limitation has begun to run, it runs its full course; *Venkappa Gurappa Hosur* v. *Kasawwa,* (1997) 4 Supreme 217.

(ii) Sub-section (3) of section 468 which was added by Cr. P (Amendment Act), 1978 provides that in relation to offences which may be tried together, the period of limitation shall be tried together, the period of limitation shall be determined with reference to the offence which is punishable with the more or most severe punishment. The language of sub-section (3) of section 468 makes it imperative that the limitation provided for taking cognizance in section 468 in respect of offence charged and not in respect of offence finally proved; *State of Himachal Pradesh* v. *Tara Dutta*, AIR 2000 SC 297.

(iii) When the respondents were charged under section 468 read with 120 B per which the impossible punishment is 7 years and section 5(2) of Prevention of Corruption Act 1947, which is punishable with imprisonment for a term which may extend to 7 years and for such offences no period as limitation having been provided for in section 468, the cognizance taken by Special Judge cannot said to be barred by limitation; *State of Himachal Pradesh* v. *Tara Dutta*, AIR 2000 SC 297.

Commencement of the period of limitation.
(1) The period of limitation, in relation to an offence, shall commence,—
(a) on the date of the offence; or
(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded

Exclusion of time in certain cases.
In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of

the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where , under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, than, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender— (a) has been absent from the India or from any territory outside India which is under the administration of the Central Government, or (b) has avoided arrest by absconding or concealing himself, shall be excluded.

Exclusion of date on which Court is closed.

Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.

Explanation.—A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

Continuing offence.

In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

Extension of period of limitation in certain cases.

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

(i) It is not necessary to decide whether the extension of period of limitation under section 473 must precede of taking of cognizance of the offence; *Srinivas Pal* v. *Union Territory of Arunachal Pradesh (Now State)*, 1988 Cr LJ 1803: AIR 1988 SC 1729.

(ii) Whenever a Magistrate invokes the provision and condones the delay the order of Magistrate must indicate that he was satisfied on the facts and circumstances of case that the delay has been properly explained and necessary to condone delay; *State of Himachal Pradesh* v. *Tara Dutta*, AIR 2000 SC 297.

Text books:

1. Rattan Lal & Dhirajlal – Code of Criminal Procedure
2. R.V. Kelkar – Code of Criminal Procedure

References:

1. S.N. Mishra – Code of Criminal Procedure
2. Ganguly – Criminal Court, Practice and Procedure