

may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation.—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(c) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(d) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within sub-section (3) of this section.

(e) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may subsequently be charged with, and tried for, robbery on the same facts.

(f) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

301. Appearance by Public Prosecutors.—(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

STATE AMENDMENT

West Bengal

For sub-section (1) of section 301 of the principal Act, the following sub-sections shall be substituted:—

“(1) (a) The Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(b) The Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry or trial.”.

[Vide West Bengal Act 26 of 1990, s. 4.]

302. Permission to conduct prosecution.—(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor,