Code of Criminal Procedure Act, 1973

Learning Objectives

Understand the history of Code of Criminal Code, 1973.

Note the territorial extent, scope and applicability

The Code of Criminal Procedure (CrPC) is the main legislation on procedure for administration of substantive criminal law in India. It was enacted in 1973 and came into force on 1 April 1974. It provides the machinery for the investigation of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused person and the determination of punishment of the guilty. Additionally, it also deals with public nuisance, prevention of offences and maintenance of wife, child and parents. At present, the Act contains 484 Sections, 2 Schedules and 56 Forms. The Sections are divided into 37 Chapters.

1.1History

In medieval India, subsequent to the conquest by the Muslims, the Mohammedan Criminal Law came into prevalence. The British rulers passed the Regulating Act of 1773 under which a Supreme Court was established in Calcutta and later on at Madras and in Bombay. The Supreme Court was to apply British procedural law while deciding the cases of the Crown's subjects. After the Rebellion of 1857, the crown took over the administration in India. The Criminal Procedure Code, 1861 was passed by the British parliament. The 1861 code continued after independence and was amended in 1969. It was finally replaced in 1972.

1.2 Territorial Extent, Scope and Applicability. The Criminal Procedure Code is applicable in the whole of India except in the State of Jammu and Kashmir. The Parliament's power to legislate in respect of Jammu & Kashmir is curtailed by Article 370 of the Constitution of India.

Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply-

(a)to the State of Nagaland,

(b)to the tribal areas,

However the concerned State Government may, by notification apply any or all of these provisions in these areas. Moreover, the Supreme Court of India has also ruled that even in these areas, the authorities are to be governed by the substance of these rules.

Unit – 2 : Courts

Learning Objectives

After studying this unit, you would be able to -

Understand the Constitution of Criminal Courts and Offices.

Note the power and functions of Courts.

Unit – 2 : Courts

2.1Classes of Criminal Courts

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

(i)Courts of Session;

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

(iii)Judicial Magistrates of the second class; and

(iv)Executive Magistrates.

2.2 Territorial Devisions

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

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

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

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

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

2.3 Metropolitan Areas

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

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

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

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

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

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

2.4 Court of Session

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

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

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

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

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

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

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

2.5Subordination of Assistant Sessions Judge

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

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

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

2.6Courts of Judicial Magistrates

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

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

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

2.7 Chief Judicial Magistrate and Additional Chief Judicial Magistrates, etc

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

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

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

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

2.8 Special Judicial Magistrates

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

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

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

2.9 Local Jurisdiction of Judicial Magistrates

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

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

2.10 Subordination of Judicial Magistrates

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

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

2.11 Courts of Metropolitan Magistrates

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

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

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

2.12Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrates

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

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

2.13 Special Metropolitan Magistrates

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

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

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

(3)Notwithstanding anything contained elsewhere in this Code, a Special Metropolitan Magistrate shall not impose a sentence which a Judicial Magistrate of the second class is not competent to impose outside the Metropolitan area.

2.14 Subordination of Metropolitan Magistrates

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

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

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

2.15 Executive Magistrates

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

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

(3)Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the

powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.
(4)The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.
(5)Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

2.16 Special Executive Magistrates

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

2.17 Local Jurisdiction of Executive Magistrates

(1)Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Code.
(2)Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

2.18 Subordination of Executive Magistrates

(1)All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.
(2)The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

2.19 Public Prosecutors

(1)For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor for conducting, in such Court, any prosecution, appeal or other proceeding on behalf of the Central or State Government, as the case may be.
(2)For every district the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district.
(3)The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons who are, in his opinion, fit to be appointed as the Public Prosecutor or Additional Public Prosecutor for the district.
(4)No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears on the panel of names prepared by the District Magistrate under sub-section (3).
(5)A person shall only be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2), if he has been in practice as an advocate for not less than seven years.
(6)The Central Government or the State Government may appoint, for the purposes of any case or class of cases, an advocate who has been in practice for not less than ten years, as a Special Public Prosecutor.

2.20 Assistant Public Prosecutors

(1)The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.
(2)Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.
(3)Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case: Provided that a police officer shall not be so appointed-
(a)if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or
(b)if he is below the rank of Inspector.

2.21 Power and Functions of Courts

Courts by which offences are triable.- Subject to the other provisions of this Code.-
(a)any offence under the Indian Penal Code(45 of 1860) may be tried by –
(i)the High Court, or
(ii)the Court of Session, or
(iii)any other Court by which such offence is shown in the First Schedule to be triable;
(b)any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by-
(i)the High Court, or
(ii)any other Court by which such offence is shown in the First Schedule to be triable.

Jurisdiction in the case of juveniles.-

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

Sentences which High Courts and Sessions Judges may pass.-
(1)A High Court may pass any sentence authorized by law.
(2)A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.
(3)An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

Sentences which Magistrates may pass.-
(1)The Court of a Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.
(2)The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both.
(3)The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both.
(4)The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class..

Unit – 3 : Investigation , Inquiry and Trial - An Overview

Learning Objectives

After studying this unit, you would be able to –
Understand the meaning of the term Investigation, Inquiry and Trial and note the distinction between the three.

3.1 Investigation

"Investigation" has been defined under S. 2 (h) of the Criminal Procedure Code. It includes all the proceedings under "the Code of Criminal Procedure, 1973" for the collection of evidence conducted by a Police officer or by any person (other than a Magistrate) who is authorized by a Magistrate. The officer-in-charge of a Police Station can start investigation either on information or otherwise (section 157 Cr.P.C.). The investigation consists of the following steps starting from the registration of the case:-
(i). Registration of the case as reported by the complainant u/s 154 Cr.P.C., (ii). Proceeding to the spot and observing the scene of crime,
(iii). Ascertainment of all the facts and circumstances relating to the case reported, (iv). Discovery and arrest of the suspected offender(s),
(v).Collection of evidence in the form of oral statements of witnesses (sections 161/162 Cr.PC.), in the form of documents and seizure of material objects, articles and movable properties concerned in the reported crime,
(vi).Conduct of searches of places and seizure of properties, etc.
(vii).Forwarding exhibits and getting reports or opinion from the scientific experts (section 293 Cr.P.C) (viii). Formation of the opinion as to whether on the materials collected, there is a case to place the accused before a magistrate for trial and if so, taking necessary steps for filing a charge sheet, and
(ix). Submission of a Final Report to the court (section 173 Cr.P.C.) in the form of a Charge Sheet along with a list of documents and a Memo of Evidence against the accused person(s).

Case - In Adri Dharan Das v. State of W.B. , it has been opined that: "arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and connection of other persons, if any, in the crime." ***In Niranjan Singh v. State of U.P.*** , it has been laid down that investigation is not an inquiry or trial before the Court and that is why the Legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial.
In S.N.Sharma v. Bipen Kumar Tiwari , it has been observed that the power of police to investigate is independent of any control by the Magistrate.
In State of Bihar v. J.A.C. Saldanha , it has been observed that there is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment and further investigation of an offence is the field exclusively reserved for the executive in the Police Department. Manubhai Ratilal Patel v. State of Gujarat and Others,(2013) 1 SCC 314.
The documentation for the Police investigation shall include the following papers namely :- (a). First Information Report (section 154 Cr.P.C.),
(b).Crime details form, - (I F.2) (c). Arrest / court surrender memo,
(c).Arrest / court surrender memo,
(d). Property seizure memo
(e). Final Report Form (section 173 Cr.P.C.)

Police Officer's Power to Investigate Cognizable Cases

Any officer-in-charge of a Police Station may, without the order of a magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of the Criminal Procedure Code. 1973.

Note : The courts have no control in such cases over the investigation or over the action of the Police in holding such investigation. Where the offence takes place during night time, the investigation officer should bring out in his investigation the existence of light at the time of the incident. For this, he should clearly bring out the position of Electricity post / lights (public place or private place) in the rough sketch of the scene of occurrence or the scene of crime to be drawn on the crime details form. While recording the statements of witnesses of the occurrence or the observation mahazar witnesses, the facts relating to the availability of light at the spot should be highlighted.

Refusal of Investigation

(1).The following principles are laid down to guide the exercise of their discretion by Station House Officers in the matter of refusing investigation under section 157 (1) (b) of the Criminal Procedure Code.
(2).***The investigation may be properly refused in the following cases:-***
(a).*Triviality:-* Trivial offences, such as are contemplated in section 95 of the Indian Penal Code. " Nothing is an offence by reason that it causes or that is intended to cause, or that it is known to be likely to cause any harm, if that harm is so slight that no person or ordinary sense and temper would complaint of such harm".
(b).*Civil Nature:-* Cases clearly of civil nature or in which complainant is obviously endeavouring to set the criminal law in motion to support a civil right.
(c).*Petty thefts:-* Cases of petty theft of property less than Rs. 10/- in value, provided that the accused person is not an old offender, nor a professional criminal, and that the property does not consist of sheep or goats.
(d).*Injured person not wishing an inquiry:-* Unimportant cases in which the person, injured does not wish inquiry, unless (i) the crime is suspected to be the work of a professional or habitual offender or (ii) a rowdy element (iii) the investigation appears desirable in the interests of the Public.
(e).*Undetectable simple cases:-* Simple cases of house-breaking or housetrespass and petty thefts of unidentifiable property, is none of which cases is there any clue to work upon or any practical chance of detection, provided that there is nothing to indicate that the offence has been committed by a professional criminal.
(f) *Exaggerated assaults:-* Assault in cases which have been obviously exaggerated by the addition of the other charges such as theft.

Report to be sent in case of Refusal of Investigation

When an investigation is refused, at once a First Information Report only need be submitted to the court with copies usually sent to others, specifically indicating in the FIR format under column 13 – "ACTION TAKEN" that "the above report reveals commission of offences under section ……..……..., but falling under the categories of triviality or civil nature or petty theft or injured person not wishing to have an inquiry or undetectable simple case or exaggerated assault coupled with theft, was registered in crime number …… and investigation 'REFUSED'. It is also stated that further report will not be submitted, under section 157 (1) (a) (b) and (2) of the Code of Criminal Procedure. "When information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer-in-charge of a Police Station need not proceed in person or depute a subordinate officer to make an investigation on the spot ;" " If it appears to the officer-in-charge of a Police Station that there is no sufficient ground for enquiring on an investigation, he shall not investigate the case;" " The officer-in- charge of the Police Station shall state in his report his reasons for not fully complying with the requirements, "the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, that fact that he will not investigate the case or cause it to be investigated." Note (i). The Station House Officer, after registering a case of trivial nature under appropriate sections of the law and the connected circumstances and refusing investigation of that case, shall give a copy of the FIR to the informant or the complainant and obtain an acknowledgement in the counterfoil copy of the FIR. (ii). The SHO will not send any further report of such cases including the final report under section 173 Cr.P.C.

Refusal of Local Investigation

The power to abstain from local investigation under section 157 (1) (a) of the Criminal Procedure Code is primarily intended to be exercised in cases which are complete on the information brought to the station, requiring no further enquiry.

Investigation to be Impartial

Investigating officers are warned against prematurely committing themselves to any view of the facts for, or against a person. The aim of the investigating officer should be to find out the truth and to achieve this purpose, it is necessary to preserve an open mind throughout the Inquiry.

Further Investigation

The mere undertaking of a further investigation either by the investigating officer on his own or upon the directions of the superior police officer or pursuant to a

direction by the Magistrate concerned to whom the report is forwarded does not mean that the report submitted under Section 173 (2) is abandoned or rejected. It is only that either the investigating agency or the court concerned is not completely satisfied with the material collected by the investigating agency and is of the opinion that possibly some more material is required to be collected in order to sustain the allegations of the commission of the offence indicated in the report. Vipul Shital Prasad Agarwal v. State of Gujarat and another, (2013) 1 SCC 197.

3.2 Inquiry

According to S. 2(g)"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

Case – The word Inquiry has been defined u/s 2 (g), Cr.P.C. It is evident from the Provision that every Inquiry other than a trial conducted by the Magistrate or Court is an Inquiry. No specific mode or manner of inquiry is provided u/s 20, of the code. In the inquiry envisaged u/s 202, Cr.P.C. examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an Inquiry envisaged u/s 202.

An inquiry is basically a proceeding wherein the magistrate or court applies the judicial mind and the purpose of such judicial mind is to determine whether further proceedings moving towards the trial shall be taken or not. Inquiry as a stage of criminal process commences with the cognizance taken by magistrate u/s 190. However the filing of complaint or the police report whereupon the magistrate applies his mind on the point whether he shall take cognizance or not will also be deemed to be a part of the stage of inquiry.

The inquiry proceedings moves uptill the stage of commencement of charge framing. Thereafter with the charge of framing the trial process starts.

During an inquiry some important proceedings that can be taken place in the inquiry. For Example :

1.Taking of Cognizance
2.Complaint proceeding
3.Dismissal of complaint
4.Issue of process
5.Handing over of documents
6.Fixation of date for 1st hearing etc.

3.3Trial

Trial has three basic stages, which normally occur in the same order. Investigation (where evidences are to be collected), Inquiry (A judicial proceeding where judge ensures for himself before going on trial, that there are reasonable grounds to believe the person to be guilty) and trial. The term trial has not been defined in the CrPC, however is commonly understood to mean – a judicial proceeding where evidences are allowed to be proved or disproved, and guilt of a person is adjudged leading to a acquittal or a conviction.

Trials are normally divided into Warrant Trials and Summons Trials. A criminal trial starts with framing of charges, if a person is not discharged-trial begins, by framing of charge and reading and explaining to him. After framing of charges the judge proceeds to take the "plea of guilt" which is an opportunity to the accused to acknowledge that he pleads guilty and does not wish to content the case. Here the judge's responsibility is onerous, he has to, first ensure – plea of guilt is free and voluntary.

Secondly - he has also to ensure that if there had been no plea of guilt – was the prosecution version if unrebutted- would have led to conviction. If both the requirements are met – then judge can record and accept plea of guilt and convict the accused after listening to him on sentence

After plea of guilt is taken, if accused pleads "not guilty" or court does not accept his plea of guilt, trial moves on- prosecutor then explains to the court the basic outline of the case and what evidences he proposes to lead in order to prove the same. He ask the court to summon witnesses so that court can record their evidence. As the prosecution has to start leading evidence to bring home the offence to the accused – it is said "The Burden of Proof lies on the Prosecution". The basic rule is whoever asserts the affirmative of an issue has the burden to prove facts on which the accused's liability depends, and this burden of proof - is not a light burden – the prosecution has to prove that the accused is guilty beyond reasonable doubts. This is primarily for two reasons:

1.A person's (accused's) life and liberty is involved.
2.And the state with the investigative machinery at its disposal is sufficiently armed to get good evidence which an individual would not have.

So since now the burden of proof is on the prosecution it has to prove facts which incriminate the accused. When witnesses for the prosecution are called they are first examined by the prosecutor – then cross examination by the defence advocate, and with the leave of court prosecutor can again examine to clarify the loopholes exposes during toss.

After the prosecutor has led its evidence – court asks the accused to himself enter the witness box but in order to explain circumstances that appeared against him – he has given an opportunity to give personal explanations. This is a remarkable manifestation of Audi Alteram Partem where the court makes a direct dialogue with the accused to know what his take is. This is not a chance to the court to bequile or cross examine the accused. Any answer given by accused is not to be used as evidence against him but the court may take into consideration to adjudge overall trustworthiness of the case. This is done u/s 311 CrPC, after the examination. If the court feels that prosecution has not successfully brought home the guilt – it may acquit – else if it feels that they have sufficiently discharged their burden – then it asks defence if it seeks to lead evidence, and the same cycle again. Now after evidence from both sides is recorded. Parties then make arguments on the same, and in the end court pronounces the judgement.

In case of Acquittal the accused is set at liberty. In case of conviction – the punitive dilemma begins. The court has to fix another hearing to decide on the quantum of sentence. Here the prosecution as well as the defence can lead evidences that would have been fatal earlier, in order to aggravate or mitigate the punishment. Here the court gives equal leverage to the "Crime" as well as the "Criminal". Earlier the gravity of crime used to be the sole criteria – however in recent times, there has been a definitive shifts of focus from crime to criminal which manifests growing importance of reformation at the end of punishment. The court at this stage would also consider whether the accused is entitled to the benefits of probation or admonition.

3. 4 Distinction between Investigation, Inquiry and Trial

Investigation, inquiry and trial are three different stages of a criminal case. The case is first investigated by the police to ascertain whether an offence has actually been committed and if so, by whom and the nature of evidence available for the prosecution.

Inquiry is the second stage which is conducted by a Magistrate for the purpose of committing the accused to sessions or discharging him when no case has been made out. In case of complaints made to a Magistrate, it refers to a preliminary inquiry made by him under Section 202 to ascertain the truth or falsehood of the complaint or whether there is any matter which calls for investigation by a criminal court.

The final stage of the case comes when the accused is put on trial before the Sessions Judge or the Magistrate when he is empowered by law to try the cases himself.

Investigation and Inquiry *:*

(1)An investigation is made by a police officer or by some person authorized by a Magistrate but is never made by a Magistrate or a court. An inquiry is a judicial proceeding made by a Magistrate or a court.

(2)The object of an investigation is to collect evidence for the prosecution of the case, while the object of an inquiry is to determine the truth or falsity of certain facts with a view to taking further action thereon.

(3)Investigation is the first stage of the case and normally precedes enquiry by a Magistrate.

Inquiry and Trial :

Both inquiry and trial are judicial proceedings, but they differ in the following respects:

(1)An enquiry does not necessarily mean an inquiry into an offence for, it may, as well relate to matters which are not offences, e.g., inquiry made in disputes as to immovable property with regard to possession, public nuisances, or for the maintenance of wives and children. A trial on the other hand, is always of an offence.

(2)An inquiry in respect of an offence never ends in conviction or acquittal; at the most. It may result in discharge or commitment of the case to sessions. A trial must invariably end in acquittal or conviction of the accused.

Unit – 4 : Jurisdiction

Learning Objectives

Understand the jurisdiction of court to take the cognizance of offences and its consequrnces if Committed within India and outside India.

4.1 Jurisdiction of Criminal Courts

Territorial jurisdiction of court to take cognizance of offences. It deals with s. 177- 188 of CrPc

Section 177 - *Ordinary place of inquiry and trial*: - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Section 178: *Place of inquiry or trial*: -

(a)When it is uncertain in which of several local areas an offence was committed, or

(b)where an offence is committed partly in one local area and partly in another, or

(c)where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d)where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Section 179: *Offence triable where act is done or consequence ensues*: - When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

Section 180: *Place of trial where act is an offence by reason of relation to other offence:-* When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

Section 180: *Place of trial where act is an offence by reason of relation to other offence:-* When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

Section 181*: Place of trial in case of certain offences.*

(1)Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.

(2)Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.

(3)Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.

(4)Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

(5)Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

Section 182: *Offences committed by letters, etc.*: -

(1)Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2)Any offence punishable under section 495 or section 494 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage [, or the wife by first marriage has taken up permanent residence after the commission of offence].

Section 183: *Offence committed on journey or voyage*: - When an offence is committed, whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

Section 184: *Place of trial for offences triable together:-* Where

(a)the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219 , section 220 or section 221 , or

(b)the offence or offences committed by several persons are such that they may be charged with, and tried together by virtue of the provisions of section 223 , the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences.

Section 185: *Power to order cases to be tried in different sessions divisions: -*

Notwithstanding anything contained in the preceding provisions of this Chapter, the State Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division: Provided that such direction is not repugnant to any direction previously issued by the High Court or the Supreme Court under the Constitution, or under this Code or any other law for the time being in force.

Section 186: *High Court to decide, in case of doubt, district where inquiry or trial shall take place:-* Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided

(a)if the Courts are subordinate to the same High Court, by that High Court;

(b)if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced, and thereupon all other proceedings in respect of that offence shall be discontinued.

Section 187: *Power to issue summons or warrant for offence committed beyond local jurisdiction.*

When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of sections 177 to 185 (both inclusive), or any other law for the time being in force, be inquired

into or tried within such jurisdiction but is under some law for the time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is not punishable with death or imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond with or without sureties for his appearance before the Magistrate having such jurisdiction.
(1)When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.
Section 188: *Offence committed outside India*: - When an offence is committed outside India
(a)by a citizen of India, whether on the high seas or elsewhere; or
(b)by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found: Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

Unit – 5 : Information to Police and their power to Investigate

Learning Objectives

Understand the Power and function of police when information is received about cognizable and non- cognizable offence.

Understand the procedure of Investigation.

Chapter 12 of Code of Criminal Procedure, 1973 deals with it. It covers s. 154 – 176.

154.*Information in cognizable cases*.- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
(2)A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.
(3)Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

155.*Information as to non-cognizable cases and investigation of such cases*.- (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non- cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.
(2)No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.
(3)Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.
(4)Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

156.*Police officers power to investigate cognizable case*.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
(2)No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
(3)Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

157.*Procedure for investigation*.- (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:
Provided that-
(a)when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
(b)if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.
(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

158.*Report how submitted*.- (1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf.
(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159.*Power to hold investigation or preliminary inquiry*.- Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Code.

160.*Police officers power to require attendance of witnesses*.- (1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:
Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.
(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

161.*Examination of witnesses by police*.- (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
(2)Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
(3)The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

162.*Statements to police not to be signed*: Use of statements in evidence.- (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to 1 writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:
Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act , 1872; (1 of 1872) and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.
(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1)of section 32 of the Indian Evidence Act, 1872, (1 of 1872) or to affect the provisions of section 27 of that Act.
Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

163.*No inducement to be offered*.- (1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872(1 of 1872).
(2)But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will:
Provided that nothing in this sub-section shall affect the provisions of sub-section (4) of section 164.

164. ***Recording of confessions and statements***.- (1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:
Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.
(2)The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.
(3)If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.
(4)Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:-
"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made.It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.
(Signed) A. B. Magistrate".
(5)Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.
(6)The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

165. *Search by police officer*.- (1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.
(2)A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person.
(3)If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.
(4)The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.
(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

166.*When officer in charge of police station may require another to issue search warrant*.- (1) An officer in charge of a police station or a police officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2)Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.
(3)Whenever there is reason to believe that the delay occasioned by requiring an officer in-charge of another police station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in-charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.
(4)Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-sections
(1) and (3) of section 165.
(5) The owner or occupier of the place searched shall, on application, be furnished free of cost with a copy of any record sent to the Magistrate under sub-section (4).

167. ***Procedure when investigation cannot be completed in twenty four hours***.- (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.
(2)The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:
Provided that-
(a) the Magistrate may authorise detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail; and every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;
(b)no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;
(c)no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.
Explanation.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.
(3)A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.
(4)Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.
(5)If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.
(6)Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

168. ***Report of investigation by subordinate police officer***.- When any subordinate police officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police station.

169. ***Release of accused when evidence deficient***.- If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

170. ***Cases to be sent to Magistrate when evidence is sufficient***.- (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.
(2)When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.
(3)If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.
(4)The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

171. ***Complainant and witnesses not to be required to accompany police officer and not to be subjected to restraint***.- No complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:
Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

172. ***Diary of proceedings in investigation***.- (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.
(2)Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.
(3)Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145 as the case may be, of the Indian Evidence Act, 1872, (1 of 1872) shall apply.

173. ***Report of police officer on completion of investigation***.- (1) Every investigation under this Chapter shall be completed without unnecessary delay.
(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating –
(a)the names of the parties;
(b)the nature of the information;
(c)the names of the persons who appear to be acquainted with the circumstances of the case;
(d)whether any offence appears to have been committed and, if so, by whom;
(e)whether the accused has been arrested;
(f)whether he has been released on his bond and, if so, whether with or without sureties;
(g)whether he has been forwarded in custody under section 170.
(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.
(3)Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.
(4)Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.
(5)When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-
(a)all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
(b)the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.
(6)If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interest of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.
(7)Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).
(8)Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

174. ***Police to enquire and report on suicide, etc***.- (1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.
(2)The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.
(3)When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.
(4)The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

175. ***Power to summon persons***.- (1) A police officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate's Court.

176. ***Inquiry by Magistrate into cause of death***.- (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.
(2)The Magistrate holding such an

inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.
(3)Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterested and examined.
(4)Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.
Explanation.- In this section, the expression "relative" means parents, children, brothers, sisters and spouse.

Unit – 6 : First Information Report

Learning Objectives

Understand what is F.I.R and what are the options with you when a police officer - in
- charge of police station or any other police officer,, acting under the directions of officer- in – charge of police station refuses to register F.I.R. Be clear about purpose and objects of F.I.R.

An information given under sub-section (1) of section 154 CrPC is commonly known as first information report though this term is not used in the Criminal Procedure Code (in short CrPC). It is the earliest and the first information of a cognizable offence recorded by an officer-in-charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under section 169 or 170 CrPC, as the case may be, and forwarding of a police report under section 173 CrPC. It is quite possible and it happens not infrequently that more information than one are given to a police officer-in-charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in section 154 CrPC. Apart from a vague information by a phone call, the information first entered in the station house diary, kept for this purpose, by a police officer-in-charge of a police station is the first information report- FIR postulated by section 154 CrPC. All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC. Take a case where an FIR mentions cognizable offence under section 307 or 326 IPC and the investigating agency learn during the investigation or receive fresh information that the victim died, no fresh FIR under section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt.

Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected, it does not require filing of fresh FIR against H – the real offender who can be arraigned in the report under section 173(2) or 173(8) of CrPC, as the case may be.

Purpose and Object :

The purpose of registration of FIR is manifold that is to say
(1)to reduce the substance of information disclosing commission of a cognizable offence, if given orally, into writing.
(2)If given in writing to have it signed by the complainant.
(3)To maintain record of receipt of information as regards commission of cognizable offences.
(4)To initiate investigation on receipt of information as regards commission of cognizable offence.
(5)To inform Magistrate forthwith of the factum of the information received.

The principal object of the FIR from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps to trace and bring to book the guilty.

Evidentiary value of FIR :

FIR is not a piece of substantive evidence. It can be used only for limited purposes, like corroborating under section 157 of the Evidence Act or contradicting (cross-examination under section 145 of Evidence Act) the maker thereof, or to show that the implication of the accused was not an after-thought. It can also be used under section 8 and section 11 of the Evidence Act. Obviously, the FIR cannot be used for the purposes of corroborating or contradicting or discrediting any witness other than the one lodging the FIR. It cannot be used for corroborating the statement of a third party. If the FIR is of a confessional nature it cannot be proved against the accused-informant, because according to section 25 of the Evidence Act, no confession made to a police officer can be proved as against a person accused of any offence. But it might become relevant under section 8 of the Evidence Act.

What you will do when police officer refuse to register FIR?

The police cannot refuse to register the case on the ground that it is either not reliable or credible (Smt. Gurmito vs. State of Punjab And Ors 1996 CriLJ 1254 P&H). Further, refusal to record FIR on the ground that the place of crime does not fall within the territorial jurisdiction of the police station, amount to dereliction of duty. Information about cognizable offence would have to be recorded and forwarded to the police station having jurisdiction (State of Andhra Pradesh vs. Punati Ramulu And Others, AIR 1993 SC 2644).

When a police officer-in-charge of a police station or any other police officer, acting under the directions of the officer-in-charge of police station refuses to register information, any person aggrieved by such refusal may send in writing and by post, the substance of such information disclosing a cognizable offence, to the Superintendent of Police under section 154(3) or to the Magistrate concerned under section 156(3) of the CrPC. It is the duty of the officer-in-charge of the police station to register an FIR when investigation under section 156(3) of CrPC is directed by the Magistrate, even when the Magistrate explicitly does not say so (***Mohd. Yoysuf vs. Afaq Jahan***, (2006), SCC 627).

Latest Case Law Whether a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 or the police officer has the power to conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the same?

The Supreme Court of India, ***in Lalita Kumari vs. Govt. of UP*** on 12 November, 2013 held that 'the police must compulsorily register the FIR on receiving a complaint if the information discloses a cognizable offence, and no preliminary inquiry is permissible in such a situation'.

If the information does not disclose a cognizable offence but indicates the necessity for an inquiry 'a preliminary inquiry may be conducted only to ascertain whether a cognizable offence is disclosed or not'. In cases where preliminary inquiry ends in closing the complaint a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
(a)Matrimonial disputes/family disputes;
(b)Commercial Offences;
(c)Medical negligence cases;
(d)Corruption Cases;
(e)Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. A preliminary inquiry should be made time bound, and in any case it should not exceed seven days.

Punishment for giving false information:

Punishment for giving false information to the police is dealt with by sections 182, 203 & 211 of IPC. Even if such information is not reduced to writing under Section 154(1) of CrPC, the person giving the false information may nevertheless be punished for preferring a false charge under section 211 of IPC. A police officer refusing to enter in the diary a report made to him about the commission of an offence, and instead making an entry totally different from the information given, would be guilty under Sections 166A and 177 of IPC.

Unit – 7 : Evidenciary value of Statements recorded of witnesses

Learning Objectives

Understand the procedure of examination of witnesses by police.
Understand the concept of Contradiction and Omission.

1. Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
2.Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
3.The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means.

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section376D, section 376E or section 509 of The Indian Penal Code is alleged to have been committed or attempted, shall be recorded, by a woman police officer or any woman officer.

'Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable.' (Ref: Appabhai Vs. State of Gujrat AIR 1988 SC 696). This observation was made by the Hon'ble Apex Court when prosecution could not produce independent witnesses in that case. In the process of investigation, under Section 161 of Cr.P.C, any Police officer making an investigation is accredited and empowered to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to records statement of witnesses. These statements are predominantly called as section 161 Cr.P.C statements. This task is to gather evidence against accused. After filing charge sheet, these statements will also be perused by the Court to take cognizance of an offence. Such a statement can only be utilized for contradicting the witness in the manner provided by Section 145 of the Evidence Act.

What is a contradiction ?

In case of a witness testifies before the court that a certain fact is existed without stating same before police; it is a case of conflict between the testimony before the court and statement made before the police. This is a contradiction. Therefore statement before the police can be used to contradict his testimony before the court. In Appabhai .Vs. State of Gujrat AIR 1988 S.C. 694 [1988 Cri.L.J. 848], The Hon'ble Apex Court has observed as under: "The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded.

What is an Omission?

An omission is either skip or slip, it means 'exclusion' or 'leaving out'. If a certain fact is testified by a witness in his Examination-in-Chief', such fact, which is testified in Court, had been omitted to state before police, it is called an 'Omission'. Now, it is to be tested by the Court whether it is a material omission or not. If it is a material omission, it amounts material contradiction. The Hon'ble Apex Court opines that relevant and material omissions amount to vital contradictions, which can be established by cross- examination and confronting the witness with his previous statement. (Ref; Tahsildar Singh ..Vrs..State of U.P., 1959 SCR Supl. (2) 875; AIR 1959 1012 (1026)). However, as was held in Ponnuswamy Chetty v. Emperor (A.I.R. 1957 All. 239), ' a bare omission cannot be a contradiction'.

Non production of Independent Witnesses

It is settled law of criminal jurisprudence that conviction can be based on the testimony of official witnesses and it is not necessary that in each and every case, public persons must be joined in investigation. In the case of "Appabhai Vs. State of Gujrat" AIR 1988 SC 696, it has been held as under, "It is no doubt true that the prosecution has not been able to produce any independent witness to the murder that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the spectrum or the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused."

How to know whether it is a contradiction or an omission or not?

" Statement " in its dictionary meaning is the act of stating or reciting. Prima facie a statement cannot take in an omission. A statement cannot include that which is not stated. But very often to make a statement sensible or self-consistent, it becomes necessary to imply words which are not actually in the statement. Though something is not expressly stated, it is necessarily implied from what is directly or expressly stated. To illustrate: ' A' made a statement previously that he saw ' B ' stabbing ' C ' to death; but before the Court he deposed that he saw 'B' and 'D' stabbing ' C' to death: the Court can imply the word "only " after ' B ' in the statement before the police. Sometimes a positive statement may have a negative aspect and a negative one a positive aspect. Take an extreme example : if a witness states that a man is dark, it also means that he is not fair. Though the statement made describes positively the colour of a skin, it is implicit in that statement itself that it is not of any other colour. (See Tahsildar Singh's case (supra)).

The statement of injured which was recorded as a dying declaration which, consequent upon his survival, is to be treated as a statement:-

In Sunil Kumar and others Vs. State

of M.P. (AIR 1997 SC 940), in this case the Supreme Court, while dealing with the statement of injured witness, which was then recorded as a dying declaration by the Magistrate, observed that the statement of injured which was recorded as a dying declaration which, consequent upon his survival, is to be treated as a statement under Section 164 of the Criminal Procedure and can be used for "corroboration or contradiction", unlike the statement under Section 161, which can be used only for "contradiction".

If signature of a person obtained on his statement recorded under section 161 of Cr.P.C, whether such statement should be ignored? Basically, signature of witness on section 161 of Cr.P.C statement is not necessary. However, it is not the law that whenever the signature of the person is obtained in his statement recorded in the course of investigation that statement should be ignored. The law on the point informs me that in such situation the

Court must be cautious in appreciating the evidence that the witness who gave the signed statement may give in Court (See Tilkeshwar Vs. Bihar State (AIR 1956 SC 238), State of U.P VS. M.K Anthoni (AIR 1985 SC 48), (1985) 1 SCC 505.and State of Rajasthan Vs. Teja Ram and Ors. (AIR 1999 SC 1776). It has been held that obtaining the signature of the witness in the statement recorded under Sec.161 of the Code does not render it inadmissible under Sec.161 of the Code but, it may affect the weight to be attached to the evidence of such witness. Notwithstanding that the statement is signed, it continues to be a statement recorded under Sec.161of the Code, going by the said decisions. (See also M. Sundaramoorthy vs State Of Kerala, (2011), Hon'ble Kerala High Court, Crl.MC.No. 464 of 2011).

Improvements in the evidence of prosecution witnesses:-

The Court disbelieves the evidence of prosecution witness, if there are improvements in the deposition of such witness made over his statement recorded under section 161 of Cr.P.C. In the cases of Ashok Vishnu Davare Vs. State of Maharasthra, (2004) 9 SCC 431, Radha Kumar v. State of Bihar (now Jharkhand) [(2005) 10 SCC 216] and Sunil Kumar Sambhudaval Gupta (Dr.) and Others Vs. State of Maharashtra, (2010) 13 SCC 657, in which the Hon'ble Supreme Court has not believed the evidence of prosecution witnesses on account of improvements in the deposition of the witnesses made over their statements recorded under Section 161, Cr.P.C. (See also Baldev Singh vs State Of Punjab, , criminal appeal No. 1303 of 2005, [2013], Baldev Singh vs. State of Punjab (1990 (4) SCC 692 = AIR 1991 SC 31)). However, in Arjun and others ..Vs.. State of Rajsthan, AIR 1994 SC 2507, The Hon'ble Court has held that – A little bit of discrepancies or improvement do not necessarily demolish the testimony. Trivial discrepancy, as is well known, should be ignored. Under circumstantial variety the usual character of human testimony is substantially true. Similarly, innocuous omission is inconsequential.

Even honest and truthful witnesses may differ in some details unrelated to the main incident:-

In State of U.P. Vs. M.K. Anthony AIR 1985 SC 48, the Hon'ble Apex Court laid down certain guidelines in this regard, which require to be followed by the courts in such cases. The Court observed as under :- technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer."

Confrontation of Statement:- Dandu Lakshmi Reddi vs. State of A.P. (AIR 1999 SC 3255), it was observed that Section 162 of the Code of Criminal Procedure (for short the Code) interdicts the use of any statement recorded under Section 161 of the Code except for the limited purpose of contradicting the witness examined in the trial to whom such statement is attributed. Of course, this Court has said in Raghunandan Vs. State of U.P., (AIR 1974 SC 463) that power of the court to put questions to the witness as envisaged in Section 165 of the Evidence Act would be untrammeled by the interdict contained in Section 162 of the Code. The following observations in the aforesaid decision, in recognition of the aforesaid power of the court, would be useful in this context: We are inclined to accept the argument of the appellant that the language of Section 162 Criminal Procedure Code, though wide, is not explicit or specific enough to extend the prohibition to the use of the wide and special powers of the Court to question a witness, expressly and explicitly given by Section 165 of the Indian Evidence Act in order to secure the ends of justice. Therefore, we hold that Section 162 Criminal Procedure Code does not impair the special powers of the Court under Sec. 165 Indian Evidence Act. Ultimately, in the said ruling Dandu Lakshmi Reddi (supra), it was held that ' It must now be remembered that the said procedure can be followed only when a witness is in the box. Barring the above two modes, a statement recorded under Section 161 of the Code can only remain fastened up at all stages of the trial in respect of that offence. In other words, if the court has not put any question to the witness with reference to his statement recorded under Section 161 of the Code, it is impermissible for the court to use that statement later even for drawing any adverse impression regarding the evidence of that witness. What is interdicted by the Parliament in direct terms cannot be obviated in any indirect manner.'

A statement under Section 161 Cr. P. C is not a substantive piece of evidence:– As has been held In Rajendra singh vs. State of U.P – (2007) 7 SCC 378, "a statement under Section 161 Cr. P. C is not a substantive piece of evidence. In view of the provision to Section 162 (1) CrPC, the said statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Therefore, the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding that Respondent 2 could not have been present at the scene of commission of the crime."

Unit – 8 : General Diary and Charge Sheet

Learning Objectives

Understand the concept of case diary and what are the facts to be incorporated in case diary.

Understand the process of filing Charge Sheet.

8.1 Diary of proceeding in Investigation

Under the provision of Section 172 Cr.P.C. every Police Officer conducting investigation shall maintain a record of investigation done on each day in a Case Diary in the prescribed Form. Case Diaries are important record of investigation carried out by an Investigating Officer.

Any Court may send for the Case Diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

Facts to be incorporated in Case Diaries:

The Case Diary, which is a record of day by day investigation of a case, shall contain details of the time at which the information reached the Investigating Officer, time at which investigation began and was closed, the place or places visited by him and a statement of the facts and circumstances ascertained through investigation.

Case Diaries should contain only particulars of actual steps taken or progress made in the investigation and such details of investigation which have bearing on the case. Addresses, both present and permanent of the witnesses and all other relevant details should be invariably recorded in the Case Diaries. The following shall not be incorporated in the Case Diaries:

•Opinion of Investigating Officer, opinion of the Supervisory Officers and Law Officers

•Any conflict of opinion between I.O., Law Officers, SP, DIG and Head Office.

•Recommendations made in concluding report of the O., comments of Law Officer(s) and Supervisory Officers.

•Any other facts/circumstances not relating to investigation of the case.

Every Investigating Officer, to whom part investigation of a case is entrusted, will also maintain a Case Diary for the investigation made by him.

Concept of Case Diary

Section 172 Cr.P.C. lays down that every police officer making an investigation should maintain a diary of his investigation. Each State has its own police regulations or otherwise known as police standing orders and some of them provide as to the manner in which such diaries are to be maintained. These diaries are called case diaries or special diaries. Like in Uttar Pradesh, the diary under section 172 is known as 'special diary' or 'case diary' and in some other States like Andhra Pradesh and Tamilnadu, it is known as 'case diary'. The Section itself indicates as to the nature of the entries that have to be made and what is intended to be recorded is what the police officer did, the places where he went and the places which he visited etc. and in general it should contain a statement of the circumstances ascertained through his investigation. Sub-section (2) is to the effect that a criminal court may send for the diaries and may use them not as evidence but only to aid in such inquiry or trial. The aid which the court can receive from the entries in such a diary usually is confined to utilizing the information given therein as foundation for questions to be put to the witnesses particularly the police witnesses and the court may, if necessary, in its discretion use the entries to contradict the police officer who made them. Coming to their use by the accused, Sub-section (3) clearly lays down that neither the accused nor his agents shall be entitled to call for such diaries nor he or they may be entitled to see them merely because they are referred to by the courts. But in case the police officer uses the entries to refresh his memory or if the court uses them for the purpose of contradicting such police officer then provisions of Section 161 or Section 145, as the case may be, of the Evidence Act would apply. Section 145 of the Evidence Act provides for cross-examination of a witness as to the previous statements made by him in writing or reduced into writing and if it is intended to contradict him by the writing, his attention must be called to those parts of it which are to be used for the purpose of contradiction. Section 161 deals with the adverse party's rights as to the production, inspection and cross-examination when a document is used to refresh the memory of the witness. It can therefore be seen that the right of accused to cross-examine the police officer with reference to the entries in the General Diary is very much limited in extent and even that limited scope arises only when the court uses the entries to contradict the police officer or when the police officer uses it for refreshing his memory and that again is subject to the limitations of Sections 145 and 161 of the Evidence Act and for that limited purpose only the accused in the discretion of the court may be permitted to peruse the particular entry and in case if the court does not use such entries for the purpose of contradicting the police officer or if the police officer does not use the same for refreshing his memory, then the question of accused getting any right to use the entries even to that limited extent does not arise.

As per section 172 deals with in three clauses:

(1). Every police officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2).Any criminal court may send for the police diaries of case under inquiry or trial in such court, and may use such court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3).Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the court; but, if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of Indian Evidence Act, 1872, shall apply.

It means this section deals with or shows that what a "special" diary of a police-officer making an investigation should contain. Every police-officer making an investigation shall enter his proceedings in a diary which may be used at the trial or inquiry, not as evidence in the case but to aid the court in such inquiry or an investigation started under section-174 of the code.

The object of recording "case diaries" under this section is to enable courts to check the method of investigation by the police. The entries in a police diary should be made with promptness in sufficient details mentioning all significant facts on careful chronological order and with complete objectivity. The haphazard maintenance of a police case diary not only does no credit to those responsible for maintaining it but defeats the very purpose for which it required to be maintained. So we can say that this section does not deal with the recording of any statement made by witnesses. Oral statements of witnesses should not be recorded in the diary. Similarly the court should not while recording the evidence of investigating office record anything which came to the knowledge of such an officer during the investigation of the other case.

A diary kept under this section cannot be used as evidence of any data, fact or statement contained therein, but it can be used for the purpose of assisting the court in inquiry or trial by enabling it to discover means for further elucidation of points which need clearing up before justice can be done.

Use Of Case Diary

In case Shamushul Kanwar vs State of U.P it was held that It is manifest from its bare reading without subjecting to detailed and critical analysis that the case diary is only a record of day-to-day investigation of the investigating officer to ascertain the statement of circumstances ascertained through the investigation. Under sub-section (2) of Section 172, the Court is entitled at the trial or enquiry to use the diary not as evidence in the case, but as aid to it in the inquiry or trial. Neither the accused, nor his agent, by operation of sub-section (3), shall be entitled to call for the diary, not shall he be entitled to use it as evidence merely because the Court referred to it. Only right given there under is that if the Police Officer who made the entries in the diary uses it to refresh his memory or if the Court uses it for the purpose of contradicting such witness, by operation of Section 145 of the Evidence Act, it shall be used for the purpose of contradicting such witness i.e., Investigation officer or the Court. It is, therefore, clear that unless the investigating Officer or the Court uses it either to refresh the memory or contradicting the investigating Officer as previous statement under Section 161 that too after drawing his attention thereto as is enjoined under Section 145 of the Evidence Act, the entries cannot be used by the accused as evidence.

But the Gujarat high court has

confirmed the order of special CBI court, which refused an accused in the Sohrabuddin Sheikh fake encounter case, access to the case diary.

Additional chief judicial magistrate AY Dave declined accused IPS officer Rajkumar Pandian's plea seeking the case diary. The suspended officer had demanded that CBI place a certified copy of the full case diary in court in a sealed cover. But the magistrate observed that pending investigation, the probe agency can't be expected to submit it in court. Pandian later approached the high court, but Justice AS Dave refused to interfere in the CBI court's order. The high court noted that according to Section 172 of CrPC, an accused is not entitled to a copy of the case diary. The trial courts may use such diaries prepared by the investigating officer, but these documents can't be used as evidence. "Sub-section (3) of section 172 of CrPC mandates that neither the accused nor his agents shall be entitled to call for such diaries, nor he or they shall be entitled to see them merely because such diaries are referred to by the court. However, if

such diaries or extracts therein are used by the police officer for refreshing the memory or if the court uses them for the purpose of contradicting such police officers, provisions of Evidence Act will apply," the high court observed.

The Supreme Court has ruled that no court should rely on a case diary as evidence and acquit or convict an accused on the basis of that. The judgment could protect the interests of witnesses in criminal cases while keeping under wraps the investigation done by police.

A bench of Justices DK Jain and RM Lodha ruled that a criminal court can use the case diary to help an inquiry or trial but not as evidence. This position is made clear by Section 172(2) of the Code.

In the case of investigation

A police officer, who investigated a criminal case either fully or partly, is entitled to look into the 'case diary' containing the details of the investigation and refresh his memory while deposing as a witness before the trial court, the Madras High Court has said.

A diary kept under this section cannot be used as evidence of any date, fact or statement contained therein, but it can be used for the purpose of assisting the court in the inquiry or trial by enabling it to discover means for further elucidation of points which need clearing up before justice can be done. It can be used as aid in framing a charge though not for founding the charge. The magistrate cannot take cognizance or issue process against accused on the materials contained in the case diary alone, unless facts contained in the report under section 173 constitutes an offence.

The Supreme Court has held that the police diaries of a case under inquiry or trial can be made use of by a criminal court only for aiding it, in such inquiry or trial. The court would be acting improperly if it uses them in its judgement or seek confirmation of its opinion on the question of appreciation of evidence from statements contained in such diaries. entries in police diaries cannot be used as evidence against the accused. They cannot, therefore, used to explain any contradiction in the evidence of a prosecution witness which the defence has brought forth for using any portion of his statement under section 161.

Personal diary of non-investigating officer excluded.- Entries made in a personal diary by a police officer who did not investigate into a case do not fall within section 172.

•Diaries to be properly kept. – Though police diaries are not evidence against the accused, it is very essential for criminal trials that they should be properly kept in the manner provided by the Code. But the failure of the police witnesses to keep a diary as required by section 172(1) does not have the effect of making their evidence inadmissible although it lays it open to adverse criticism and may diminish its value.

•Non-compliance with the provisions. – Failure on the part of the investigating officer to comply with the provisions of section 172 is a serious lapse which diminishes the value and credibility of the investigation. But it will not affect the finding of guilt unless prejudice to the accused is shown.

•Diaries how to be maintained and entries how to be made?- The haphazard maintenance of a document of the status of a case diary not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. Courts think it to be of the utmost importance that entries in a police case diary should be made with promptness, in sufficient detail, mentioning all significant facts in careful chronological order and with complete objectivity. Entries in case diaries must be made with scrupulous completeness and efficiency.

•Making false entries in diaries-Offence.- Where a public servant makes a false entry in a diary kept and sent to his superior in pursuance of a departmental order which that public servant is bound to obey, he is guilty of an offence under section 177, I.P.C..

•Power of criminal court to send for diaries and use thereof [Sub-section (2)].- Prosecution is not expected to produce daily diary in courts as a matter of course. Such production would seriously impair the working of the police. If required for defence they can be summoned on the application of defence.

•No general order by Sessions Judge. – Sessions Judges should not issue general orders that police diaries should be sent to them along with the Magistrate's records in all cases committed for trial, and in all criminal appeals. They can only order for diaries of cases under trial before them, if they think it necessary to peruse them.

No use of police diaries as evidence. –

Police diaries are not original evidence of the matters contained in them. But they can be put in evidence, if the persons who wrote them are called as witnesses to prove the facts contained in such reports. A Judge should not take judicial notice of police papers, and he should not consult them 'in order to test evidence' in the case. The diary kept under section 172, cannot be used as containing entries which can by themselves be taken to be evidence of any date, fact or statement contained in it. Under section 172 the police diary cannot be used by any court as a substantive evidence but is intended to be used only for the purpose of assisting the court in the appreciation of the evidence and to clear up any doubtful point arising in the course of the case. A Judge is in error in making use of the police diaries at all in his judgment and in seeking confirmation of his opinion on the question of appreciation of evidence from statements contained in those diaries.

Use only as aid to court . -The power of court under section 172 to look into case diaries should be sparingly exercised and it is necessary for the court to be astute to avoid using it otherwise than as provided by law. Under section 172, any criminal court may send for the special police diary of a case under inquiry or trial in such court, and may use the diary "not as evidence, but to aid it in such inquiry or trial". It may, for instance, be of importance in case that the court should know when a witness first made a statement in connection with the case, or whether any particular person made or did not make a statement. In Khatri, the Supreme Court observes that sub-section (2) of section 172, empowers a criminal court holding an inquiry or trial of a case to send for the police diary of the case and the criminal court can use such diary not as evidence in the case, but to aid in such inquiry or trial.

As pointed out by the Supreme Court in Shamsul Kanwar , where neither the prosecution witnesses nor the court uses the case diary, the free use thereof for contradicting the prosecution evidence is obviously illegal and it is inadmissible in evidence. Thereby the defence cannot place reliance thereon.

Permitting defence counsel to see portions of police diary for use in defence of case- Court's discretion.- Though an accused person is not entitled as of right to see the case diary and his statement to the police recorded in it, there is no prohibition contained in section 172(3) against the court permitting in its discretion defending counsel to see any portion of the case diary, which the court considers in the interests of justice he should see and use in the defence of the case. There is no legal impediment to the committing court permitting in its discretion and in appropriate cases defending counsel at his request to look into a case diary to verify what the accused told the police as recorded there, before formulating his defence. Under the law as it now stands, such a permission cannot be claimed by the accused as a matter of right. It is comparatively of little use for defending counsel being permitted to look at the diary by the Sessions Judge at a belated stage of the trial. Defending counsel should know what the accused told the police in the first instance. There is a heavy responsibility on the courts in the user of case diaries under section 172(3) and on public prosecutors to bring to the notice of the trial Judge anything in the case diary favourable to the accused. In Khatri, the Supreme Court has laid down that if the case diary is used by the police officer who has made it to refresh his memory or if the criminal court uses it for the purpose of contradicting such police officer in inquiry or trial, the provisions of sections 161 and 145, as the case may be, of Indian Evidence Act would apply and the accused would be entitled to see the particular entry in the case diary which has been referred to for either of these purposes and so much of the diary as in the opinion of the court is necessary to a full understanding of the particular entry so used.

Statements of witnesses recorded in special diary not covered by section 172.- Where a police officer records in the special diary statements of witnesses, taken under section 161, the privilege given by this section does not extend to those statements.80 Such statements can be used for the purposes of section 162**.** A police diary is normally meant for a police officer investigating a criminal case for recording therein his day to day noting regarding the investigation, but he is not debarred from recording the statement of any witness therein and so the privilege in the matter of calling a police diary by an accused person or his agent contemplated under section 172 of the Code extends only to the notings recorded by a police officer therein and not to the supply of copies of the statements of the witnesses recorded therein as those statements will be covered by sub-section (3) of section 161 of the Code.

Evidentiary value of entries in police diary. – A police diary may be an official document, and the entries therein are worth what they are, but they cannot surely be accepted to be absolutely correct for all purposes, in the absence of any definite proof. There may be circumstances which might seriously challenge their correctness. An entry in a record or a document made by a person for his own benefit even if admissible should not always be taken without scanning; other circumstances have to be considered along with the entry. Entry as to time of F.I.R. must be presumed to be true. Entries of the police diary are neither substantive nor corroborative evidence.

Case Laws : There are several cases which are discussing regarding the case diary and use of case diary: *In Shamshul Kanwar vs State Of U.P. on 4 May, 1995* case also the High Court took the view that he was in a commanding position and he could have stopped the entire massacre and that he behaved with least reasonableness and therefore the death sentence has to be maintained. *In Jairajsinh Temubha Jadeja vs. State of Gujarat* case also deals with the Production of case diary – Petitioner called in question order passed by Additional Sessions Judge, on the application Exhibit 505, filed by Petitioner seeking production of case diary for purpose of effectively cross-examining prosecution witness 44 – Held, entries of police diary are neither substantive nor corroborating evidence and they cannot be used by or against any other witness than the police officer and can only be used to limited extent – On a plain reading of Sub-section (3) of Section 172 of CrPC, it was amply clear that provisions of Section 161 or Section 145, as case may be, of Evidence Act, would be applicable to contents of case diary only in the contingencies laid down there under – Hence, unless police officer who made entries in case diary uses them to refresh his memory or Court uses them for purpose of contradicting such police officer, provisions of Section 161 or Section 145 of Evidence Act would not be applicable – Section 159 of Evidence Act which provides for 'refreshing memory' interalia lays down that a witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned – Hence, it could not be said that right of Petitioner-accused under Section 145 or Section 155(3) of Evidence Act was in any manner adversely affected by non-supply of extract of the case dairy – Petitioners claim an unfettered right to make roving inspection of tentries in case diary -It could not be said that unless such unfettered right was conferred and recognized, embargo engrafted in Sub-section (3) of Section 172 of CrPC would fail to meet test of reasonableness – Proceeding taken by said witness as narrated in deposition could clearly be said to be during course of investigation and all proceedings taken by him had been noted down in case diary – During course of his cross- examination, he had stated that prior to recording his testimony, he had not referred to case diary and did not want to call for case diary to refer to same – Application made by accused not being in consonance with provisions of law, it was not possible to grant the same – No infirmity could be found in view taken by Trial Court – Petition dismissed.

8.2 Charge Sheet

When a Police officer gives a Police report under section 173 Cr.P.C. recommending prosecution, it is called a charge sheet. After questioning the accused and hearing the arguments, the magistrate frames charges on the accused for which he is tried. "It is distinct from the First Information Report (FIR) (which is the core document that describes a crime that has been committed), usually refers to one or more FIRs, and charges an individual or organization for (some or all of) the crimes specified in those FIR(s). Once the chargesheet has been submitted to a court of law, the court decides as to who among the accused has sufficient prima facie evidence against him to be put on trial. After the court pronounces its order on framing of charges, prosecution proceedings against the accused begin in the judicial system.

Here is a definition from a case **(K.VEERASWAMI vs UNION OF INDIA (1991) 3 SCC 655**) "The investigating officer collects material from all sides and prepares a report, which he files in the court as charge-sheet. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the Cr.P.C. The statutory requirement of the report under Section 173(2) would be complied with of the various details prescribed therein are included in the report. This report is intimation to the magistrate that upon investigation into a cognizable offence the Investigation Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2), purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the Court. The report is complete if it is accompanied with all the documents and statements of witnesses required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence".

Unit – 9 : Remand

Learning Objectives

Understand the procedure when investigation is not completed in twenty – hours.
Understand the concept of judicial remand.
Legal Provisions of Section 167 of Code of Criminal Procedure, 1973 (Cr.P.C.), India.
Procedure when investigation cannot be completed in twenty-four hours
This section lays down the procedure to be adopted when the investigation against accused person cannot be completed within 24 hours of his arrest and there are grounds for believing that the accusations against him are well founded.
The provisions of this section are attracted under the following conditions—
1.When the accused is arrested without warrant and is detained by a police officer in his custody;
2.It appears that more than 24 hours will be needed for his investigation;
3.There are grounds to believe that tne accusation or information against him is well founded.
4.The officer-in-charge of the police station or the investigating officer not below the rank of a sub- inspector forwards the accused for remand before a Magistrate.

The Judicial Magistrate may either refuse to detain him or he may direct his detention in police custody or judicial custody. The police can interrogate the accused even after his remand to judicial custody.
A new sub-section (2-A) has been inserted in this section by the Cr.P.C. Amendment Act of 1978 which provides that where a Judicial Magistrate is not available, the accused along with the copy of the entries in case diary should be sent to the nearest Executive Magistrate on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred.
However, the provisions of Section 167 are not to be invoked where the accusation or information is not well founded, or where the investigation can be completed within 24 hours.
The Executive Magistrate may authorise detention of the accused in custody for not more than 7 days.
Judicial Remand :
i.The Judicial Magistrate to whom the accused person is so forwarded, whether he has or has not the jurisdiction to try the case, may authorise the detention of the accused in police custody for a term not exceeding 15 days in the whole. He may order the accused to be forwarded to a judicial Magistrate having jurisdiction to try the case, if he consider detention of the accused beyond 15 days necessary for completion of investigation.
ii.The nature of custody may be altered from police custody to judicial custody and vice versa during the first 15 days period [7 days in case of Executive iii.Magistrate vide subsection (2-A)]. But on expiry of 15 days period, the accused can be ordered to be kept in judicial custody and not in the custody of the police.
iv.The Supreme Court in ***CBI Special Investigation Cell v. Atiupam Kulkarni,*** has reiterated that the custody after the expiry of first 15 days can only be judicial custody for the rest of the period of 90 days or 60 days as the case may be.
v. Thus police custody if found necessary can be ordered only during the first 15 days. However, if the accused is involved in another case he can be re-arrested and remanded to police custody with the permission of the Magistrate.
vi.Where police is not readily available for escort duty, it would be a valid ground for extending the period of remand of an accused under Section 167 (2) of the Code.
vii.The Magistrate is expected to apply his judicial mind while deciding the matter of remand taking into consideration all the available materials including the copy of case diary, and the order of police remand should not be passed in a routine manner merely because the police has so requested.
viii.The Magistrate has the discretion to order detention of the accused in police custody cr judicial custody as he thinks fit. He may also remand the accused to Army, Navy or Air Force custody if the accused person is subject to that law. In case of remand by Executive Magistrate under sub-section (2A) the reasons for authorising the detention of accused have to be recorded in writing.
ix.The maximum period of remand in case of offences punishable with death, imprisonment for life or imprisonment for a term not less than ten years is 90 days and for any other offence it is 60 days. If the investigation is not completed within this period the accused person has got to be released on bail without any further detention.
x.The prescribed statutory period of 90 days or 60 days as mentioned in Proviso (a) to Section 167 (2) is to be computed from the date on which the Magistrate authorises the detention of the accused person.
xi.The Court cannot refuse to pass an order directing the release of accused on bail on the ground that no such written application has been given by the accused. However, after filing charge-sheet the Magistrate is not competent to grant bail under this Proviso to Section 167 (2).
Case: The Supreme Court in State of West Bengal v. Dinesh Dalmia observed that "the whole purpose of Section 167, Cr. P.C. is that the accused should not be detained for more than 24 hours and subject to 15days' police remand and it can further be extended upto 90/60 days, as the case may be." The Court made it clear- that police custody means the police custody in a particular case for investigation and not judicial custody in another case.
Thus, where two F.I.Rs were lodged against the accused at Calcutta and Chennai and the accused who was arrested and in CBI custody in the case pending before the Court at Chennai, on receiving information that he was also required in case at Calcutta, voluntarily surrenders before the Magistrate of Chennai in case relating to F.I.R. in Calcutta, such notional surrender cannot be treated as police custody so far as counting 90 days, from that surrender as regards case pending in Calcutta. Explaining the reason, the Court held that a notorious criminal may have number of cases pending against him in various police stations in city or outside city, a notional surrender in pending case for another F.I.R. outside city or of another police-station in same city, if counted for the purpose of 90/60 days, as the case may be, police will not get an opportunity to get custodial investigation. Therefore, the surrender by the accused in the instant case cannot be deemed to be in the police custody in the case pending in Calcutta.

In State of Rajasthan v. Ravishankar Shrivastaya, it was held that release on bail is not allowed for an accused of corruption charges. In the instant case the accused was not arrested in the F.I.R. filed against him, but was arrested on second F.I.R. being filed against him the next day.
Application for bail was filed by the accused under Section 167 on the ground of his continued detention beyond 24 hours without proper remand in the first F.I.R. (in which he was not arrested). The High Court of Rajasthan held that the arrest of accused on the basis of second F.I.R. could not be treated as deemed custody in first F.I.R. also.
Therefore, failure of filing of charge-sheet in first F.I.R. within stipulated period from the date of so called deemed custody does not entitle the accused to be released on bail under proviso (a) of Section 167 (2) of the Code of Criminal Procedure.
Unit – 10 : Cognizance by Courts
Learning Objectives
Understand how the magistrate and court takes cognizance, its scope and limitation with various case laws.
Criminal law has always been most effective branch of the law which has helped in dealing with most brutal of the crimes and has been there to protect the society from falling in the state of anarchy. It consists of two branches known as substantive law and procedural law. While substantive law defines the various kinds of offences and the punishment to be given to the offenders, the procedural law is intended to provide a mechanism for the enforcement of the substantive criminal law. In the absence of such a procedural law, the substantive law will be rendered worthless as nobody would be able to chart out the way of prosecuting the offenders and they will be let off. So it can be concluded that both the laws complement each other.
In the language of the Hon'ble Apex Court employed in its earliest decision (Ref: R.R.Chari v. State of U.P [1], "taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of offence".
In India, the procedure to be followed for criminal proceedings is determined by the Code of Criminal Procedure, 1973. It has a full section dedicated to the cognizance of offences by the Magistrates and has also dealt with the restrictions placed on his power of cognizance regarding certain offences. These sections explain in detail the persons who are authorized to make a complaint with regard to any offence against marriage and a Magistrate can take cognizance of the offence only if those certified persons are the complainants. He is not empowered to take suo moto cognizance of these offences unless there is a grave and sudden need to take action.In this project, researcher will be discussing about various the power of Magistrate to take cognizance of various offences and then he will be discussing about the restrictions placed on him under S. 198 & 198A of the code. Then he will be dealing with to the viability of these restrictions and will be analyzing if these restrictions have been useful and have served their purpose or have they been a deterrent for the police and the victims on their way to achieve justice and prosecuting the perpetrators of various marriage related offences.
Scope of Cognizance of Offences by Magistrate
Any Magistrate of the first class and any magistrate of the second class may take cognizance of any offence. Section 190- 199 of the code describe the methods by which, and the limitations subject to which, various criminal courts are entitled to take cognizance of offences. Section 190(1) provides that, subject to the provisions of S. 195-199, any magistrate of the first class and any magistrate of the second class especially empowered in this behalf, may take cognizance of any offences-
a)Upon receiving a complaint of facts which constitute such offence.
b)Upon a police report of such facts.
c)Upon information received from any person other than a police officer, or upon his own knowledge, that such an offence has been committed.
S. 190(2) – The Chief Judicial Magistrate may specially empower any magistrate of the second class as mentioned to take cognizance of such offences as are within his competence to inquire into or try. The term complaint has been defined in S. 2(d) as meaning: 'any allegation made orally or in writing to a magistrate, with a view to his taking action under this code that some person, whether known or unknown, has committed an offence, but does not include a police report.' It also explain that A report made by a police officer in a case which disclose, after investigation, the commission of a non cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complaint. In the case of ***P. Kunhumuhammed v. State of Kerala*** it was said: the report of a police officer following an investigation contrary to S. 155(2)[3] could be treated as complaint under S. 2(d) and S.
190(1)(a) if at the commencement of the investigation the police officer is led to believe that the case involved the commission of a cognizable offence or if there is a doubt about it and investigation establishes only commission of a non- cognizable offence. If at the commencement of the investigation it is apparent that the case involved only commission of a non-cognizable offence, the report followed by the investigation cannot be treated as a complaint under S. 2(d) or ***190(1)(a***) of the Code. The expression 'police report' has been defined by S. 2(r) as meaning "a report by a police officer to a magistrate under S. 173(2)" i.e., the report forwarded by the police after the completion of investigation.
Ajit Kumar Palit v. State of W.B.:
What is taking cognizance has not been defined in the Code. The word 'cognizance' has no esoteric or mystic significance in Criminal Law or procedure. It merely means 'become aware of' and when used with reference to a court or judge. 'to take notice judicially'.
If cognizance is to be taken on a police report under S. 190(1)(b) the report must be one as defined in S. 2(r). That is the report must be one forwarded by a police officer to a magistrate under S. 173(2) and not any other report like preliminary report or an incomplete challan. And it is for the magistrate to decide whether the police report is complete. His power cannot be controlled by the investigating agency. On receiving police report the magistrate may take cognizance of the offence under S. 190(1) (b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The magistrate has not to proceed mechanically in agreeing with the opinion formed by the police, but has to apply his mind and persue the papers placed before him. He has to apply his mind to all the details embodied in the police report and to other documents and papers submitted along with the report. It may be noted that the magistrate takes cognizance of the offences and not the offender. The magistrate is not bound by the conclusion drawn by the police and it is open to him to take cognizance of an offence under S. 199(1)(b) on the basis of the police report even though the police might have recommended in their report that there were was no sufficient ground for proceeding further or that it was not a fit case where cognizance should be taken by the magistrate. It has been ruled that the magistrate can take cognizance of an offence if he is satisfied about the material.
According to S. 190(1)(c) the magistrate can take cognizance of any offence upon the information received from any person other than a police officer or upon his knowledge. The object is to enable magistrate to see that justice is vindicated notwithstanding that the persons individually aggrieved are willing or unable to prosecute. Hence the proper use of the power conferred by this provision is to proceed under it when the magistrate has reason to believe the commission of a crime but is unable to proceed ordinary way owing to absence of any complaint or police report about it. Therefore the word 'knowledge' as used in the clause (c) should be interpreted rather liberally so as to subserve the real object of the provision. It has been opined that if a magistrate takes action under S. 190(1)(c) without having jurisdiction then such trial would be vitiated.
S. 190 provide that under the condition specified in the section certain magistrate 'may' take cognizance of offences. There are varying opinions of the Courts on this point. Considering the observation of the Supreme Court in this connection it may be fairly concluded that 'a magistrate has certain discretion but it must be judicial in nature, it is limited in scope'. And taking cognizance does not depend upon the presence of the accused in the court. In fact he does not have any role at this stage. There is no question of giving him a hearing when final report of the police is considered. Nor does refusal to take cognizance of an offence leads to discharge of the accused. It may be noted that a magistrate can take cognizance of any offence only within the time-limits prescribed by law. Even after the period of limitation such offences can be taken cognizance of by the court if the delay is condoned prior to taking cognizance. The power to take cognizance of an offence may not be confused with the power to inquire into or try a case.
Cognizance taken by a Magistrate not empowered:
If any magistrate not empowered to take cognizance of an offence under S. 190(1)(a) and 190(1)(b), does erroneously in good faith take cognizance of an offence, his proceeding shall not be set aside merely on the ground of his not being

empowered.
Purshottam Jethanand v. State of Kutch [9]: If a magistrate takes cognizance of an offence and proceeds with a trial though he is not empowered in that behalf and convicts the accused, the accused cannot avail himself of the defect and cannot demand that his conviction be set aside merely on the ground of such irregularity, unless there is something on the record to show that the magistrate had assumed the power, not erroneously and in good faith, but purposely having knowledge that he did not have any such power. On the other hand if a magistrate who is not empowered to take cognizance of an offence takes cognizance upon information received or upon his own knowledge under S. 190(1)(c) his proceeding shall be void and of no effect. In such a case it is immaterial whether he was acting erroneously in good faith or otherwise.
Transfer of Cases after taking Cognizance :
This includes Transfer on application of the accused under S.191, Power of the Chief Judicial Magistrate to transfer a case under S.192 (1) and Magistrate empowered to transfer a case under S. 192(2) of Code of Criminal Procedure.
1.*Transfer on application of the accused*- when a magistrate takes cognizance of an offence under clause (c) of subsection (1) of S. 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the magistrate taking cognizance, the case shall be transferred to such other magistrate as may be specified by the Chief Judicial Magistrate in this behalf.
2.*Power of the Chief Judicial Magistrate to transfer a case*- S. 192(1) provides that any chief judicial magistrate may after taking cognizance of offence, make over the case for inquiry or trial to any competent magistrate subordinate to him. The section enables the chief judicial magistrate to distribute the work for administrative convenience. This section has conferred special power on the CJM as normally the magistrate taking cognizance of the offence has himself to proceed further as enjoined by the Code. But an exception has been made in the case of CJM, may be because he has some administrative functions also to perform. The transfer can be ordered only after taking cognizance by the transferring magistrate. The object of this section is that senior magistrate may find it convenient to when a magistrate transfers a case under S.192, it is not an administrative order. It is judicial order in as much as there should be application of mind by the magistrate before he passes the order look at most of the cases in the first instance but after taking cognizance send them for disposal to their subordinates.
3.*Magistrate empowered to transfer a case*- According to S. 192(2) "Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial." This subsection enables the CJM to clothe a first class magistrate with powers like his own under S. 192(1). This again is useful in order to relieve the CJM of unnecessary burden.
Cognizance of Offences by Court of Session:
No court of session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a magistrate under S. 193 of the Code. When an offence is exclusively triable by a court of session according to S.26 read with the First Schedule the Magistrate taking cognizance of such offence is required to commit the case for trial to the Court of Session after completing certain preliminary formality. Sometimes the posts of CJM and ADJ are held by one individual. In such a case the CJM was required to take cognizance and try economic offences. It was ruled that S. 193 did not apply to that case. For proper distribution of the work in the court of session and for administrative convenience, it has been provided that an Additional Session Judge or Assistant Session Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try under S.194 of the Code.
Limitation on the Power to take Cognizance:
i. Sections 195-199 are exceptions to the general rule that any person having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence.. To this general rule, Sections 195 to 199 of Cr. P.C. provide exceptions, for they forbid cognizance being taken of the offences referred to therein except where there is a complaint by the Court or the public servant concerned. The provisions of these sections are mandatory and a Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required by the section concerned..
ii.The Supreme Court, ***in Bashir-ul-Haq v. State,*** held that Section 195 of Cr.P.C. requires that without a written complaint of the public servant concerned no prosecution for an offence under Section 182, IPC can be launched nor any cognizance of the case taken by the Court.
Since Section 195 and the succeeding four sections i.e., Sections 196, 197, 198 & 199 impose restrictions on the power of Magistrate to take cognizance of offence under Section 190, therefore, at the stage of taking cognizance of an offence, the Magistrate should make sure whether his power of taking cognizance of the offence has or has not been taken away by any of the clauses of Sections 195-199 of the Code.
iii.The provision of Section 195(1)(a) being mandatory, any private prosecution in respect of the said offences is totally barred. Only the concerned public servants can make a complaint and initiate proceedings in respect of these offences. The power to make the complaint can be exercised only by the public servant who is for the time being holding the office or is a successor-in-office of the public servant whose order is disobeyed or lawful authority disregarded and thus an offence under Sections 172 to 188, IPC has been committed.
Case:The Supreme Court, in ***Santosh Singh v. Izhar Hussain***, observed that every incorrect or false statement does not make it incumbent upon the Court to order prosecution. The Court should exercise judicial discretion taking into consideration all the relevant facts and circumstances. It should order prosecution in the larger interest of justice and not gratify the feelings of personal revenge or vindictiveness or serve the ends of a private party.

Case:The Supreme Court in ***Sachidanand Singh v. State of Bihar***, has clarified that a prosecution for the offence of forgery would be possible under Section 195 (1) (b) (ii) only where the forgery was committed while the document was in custody of Court, i.e., custodia legis, but mere production of the document would not attract the bar of this section and in that case prosecution may be launched by any person.

iv.These restrictions have been placed on sound policy considerations and have been considered important for faster disposal of cases. S. 198 lays down an exception to the general rule that a complaint can be filed by anybody even if not connected to the victim and modifies this by saying that only aggrieved person or person specified under the section can file a complaint relating to offences relating to marriage. The object of this section is to prevent a Magistrate of his own motion inquiring into cases of marriage, unless the husband or other authorized person complains so, but once a case has been placed before him, a Magistrate is free to proceed against any person implicated. It must be understood that this section neither confer any power of cognizance on the court nor a right to complain on the aggrieved person.
Unit -11 : Summary Trial and Sessions Trial
Learning Objectives
Understand the procedure of summary and sessions trial and courts power to try it.
Summary Trial are dealt in section 260 -265 of Code of Criminal Procedure, 1973.
260 .***Power to try summarily***.-
(1)Notwithstanding anything contained in this Code-
(a)any Chief Judicial Magistrate;
(b)any Metropolitan Magistrate;
(c)any Magistrate of the ***first class*** specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:
(i)offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
(ii)theft, under section 379, section 380 or section 381 of the Indian Penal Code, (45 of 1860) where the value of the property stolen does not exceed two hundred rupees;
(iii)receiving or retaining stolen property, under section 411 of the Indian Penal Code, (45 of 1860) where the value of the property does not exceed two hundred rupees;
(iv)assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code, (45 of 1860) where the value of such property does not exceed two hundred rupees;
(v)offences under sections 454 and 456 of the Indian Penal Code(45 of 1860);
(vi)insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506 of the Indian Penal Code(45 of 1860);
(vii)abetment of any of the foregoing offences;
(viii)an attempt to commit any of the foregoing offences, when such attempt is an offence;
(ix)any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871(1 of 1871).
(2)When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by this Code.
261.Summary trial by Magistrate of the *second class*.-
The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second class power to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence.
262. Procedure for summary trials.-
(1)In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.
(2)No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.
263.Record in summary trials.-
In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely:-
(a)the serial number of the case:
(b)the date of the commission of the offence;
(c)the date of the report or complaint;
(d)the name of the complainant (if any);
(e)the name, parentage and residence of the accused;
(f)the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause (iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed;
(g)the plea of the accused and his examination (if any);
(h)the finding;
(i)the sentence or other final order
(j)the date on which proceedings terminated.
264. Judgment in cases tried summarily.-
In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.
265. Language of record and judgment.-
(1)Every such record and judgment shall be written in the language of the Court.
(2)The High Court may authorize 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.
Sessions Trial :
It is dealt in Section 225 – 237 of Code of Criminal Procedure, 1973.
Section 225 states that for every trial the prosecution will be conducted by the Public Prosecutor., appointed under section 24 of the code. It was held in Niranjan ***Singh v J.B. Bijja*** the PP so appointed shall evaluate the material and documents necessary for the prosecution.
Section 226 states that the prosecution shall start the case by describing the facts, the charge against the accused and the evidence he is going to use for the case, to prove the accused guilty. After such submission of the PP if the court finds that the evidences are not sufficient then he can discharge the accused.
Case: The SC laid various guidelines in the Alamoham Das v State of West Bengal as under:
(1)That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:
(2)Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.
(3)The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
(4)That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. We shall now apply the principles enunciated above to the present case in order to find out whether or not the courts below were legally justified in discharging the respondents.
Section 228 deals with framing of charges. When the person is not discharged under section 227, charges would be framed against him next. In the section 229 the accused can plead guilty that is, he can accept that he has committed the offence. The judge can then provide for a sentence according to his discretion. However, such a plea should be made by the accused himself and not by his advocate. If the accused does not plead guilty the trial goes on and the dates of the prosecution evidence are set. And under section 231 such evidence has to be provided by the prosecution. After that if there are no substantial evidences provided the person can be acquitted. And if such an acquittal doesn't take place the accused is allowed to defend him by virtue of section 233. Under section 234 the arguments have to be submitted and u/s 235 a judgement of acquittal or conviction has to be given.
In case there is previous conviction charged the accused does not admit that he was convicted earlier then after the conclusion of the trial the judge can take step he wants to.

Section 237 lays provision for the procedure to be followed in cases instituted u/s 199(2) which deals with defamation. Such cases have to be tries in camera and the procedure laid in section 244-247 have to be followed..

Unit – 12 : Bail and Bonds

Bail : The bail under CrPC is divided according to the types of offence alleged against the accused.

The ***basic rules for grant or denial of bail*** may simply be summarized as:

1.There are only two kinds of offences under the criminal law, bailable offence and non-bailable offence.

2.In case of bailable offences, as per section 436 CrPC (criminal procedure code 1973) bail has to be granted to the accused as it is a matter of right for the accused to demand and be granted bail.

3.In case of non-bailable offences, as per section 437 CrPC and Section 439 CrPC, the grant or refusal of the bail is a matter of discretion of the court which means bail can be granted by the court. Only condition is that it cannot be demanded as a right by the accused.

4.The section 437 CrPC (Code of Criminal Procedure 1973) lays out certain basic criteria for the court while exercising its judicial discretion for grant or refusal of the bail in case of non-bailable offences, some of the criteria are the nature of offence, past criminal record, the probability of guilt, etc. and carves out exceptions for minors , women etc.

5.Section 438 CrPC also lays down the concept of Anticipatory Bail where the accused may seek bail if they apprehend arrest, so as to prevent even the otherwise brief incarceration. It must be noted that the grant or refusal of anticipatory bail is also a matter of discretion for the court.

The Hon'ble Supreme Court of India has mentioned several other criteria as factors to be taken into consideration when granting bail in non-bailable offences, these factors includes but not limitedto probability of recommission of the offence, possibility of frightening witnesses, probability of evidences being tampered, the seniority of the accused and his consequent circles of influence in affecting the investigation if released.

Landmark cases on the factors to be taken into consideration while hearing bail application are State through ***CBI v. Amarmani Tripathi*** AIR 2005 SC 3490, ***Gurcharan Singh v. State of Delhi***, AIR 1978 SC

179. there are catena of judgement which specifically states that "bail is a rule and jail is the exception". That means apart from the above noted factors 'bail not jail' should be the thumb rule, implying that as far as possible the Courts must try and grant bail and only in exceptional circumstances can bail be refused.

Bonds : It deals with section 440 – 450 of Code of Criminal Procedure, 1973

440.Amount of bond and reduction thereof.-

(1)The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2)The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

441. Bond of accused and sureties.-

(1)Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2)Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3)If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4)For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency of fitness.

442. Discharge from custody.-

(1)As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2)Nothing in this section, section 436 or section 437 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

443. Power to order sufficient bail when that first taken in insufficient.-

If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

444. Discharge of sureties.-

(1)All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2)On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3)On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

445. Deposit instead of recognizance.-

When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behavior, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

446. Procedure when bond has been forfeited.-

(1)Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.- A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2)If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code.

(3)The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4)Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5)Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence is proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

447. Procedure in case of insolvency or death of surety or when a bond is forfeited.-

When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 446, the Court by whose order such bond was taken, or a Magistrate of the first class may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

448. Bond required from minor.-

When the person required by any Court, or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

449. Appeal from orders under section 446.-

All orders passed under section 446, shall be punishable,-

(i)in the case of an order made by a Magistrate, to the Sessions Judge;

(ii)in the case of an order made by a Court of Session, to the Court to which an appeal lies from an order made by such Court.

450. Power to direct levy of amount due on certain recognizances.-

The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond for appearance or attendance at such High Court or Court of Session.

Unit – 13 : APPEALS , REFERENCE and REVISION

Learning Objectives

Understand the concept of ***Appeals, Reference and Revision*** under this act

APPEAL : - An appeal is a request to a higher (appellate) court for that court to review and change the decision of a lower court. Because post-trial motions requesting trial courts to change their own judgments or order new jury trials are so seldom successful, the defendant who hopes to overturn a guilty verdict must usually appeal. The defendant may challenge the conviction itself or may appeal the trial court's sentencing decision without actually challenging the underlying conviction.

Section 374: Appeals from convictions

(1)Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2)Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years 149 [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,

(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.

Section 382: Petition of appeal

Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.

Section 383: Procedure when appellant in jail

If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Section 384: Summary dismissal of appeal

(1)If upon examining the petition of appeal and copy of the judgment received under section 382 or section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that

(a)no appeal presented under section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same;

(b) no appeal presented under section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;

(c)no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2)Before dismissing an appeal under this section, the Court may call for the record of the case.

(3)Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

(4)Where an appeal presented under section 383 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 382 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 393, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law.

Section 385: Procedure for hearing appeals not dismissed summarily

(1)If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given

(i)to the appellant or his pleader;

(ii)to such officer as the State Government may appoint in this behalf;

(iii)if the appeal is from a judgment of conviction in a case instituted upon complaint to the complainant;

(iv)if the appeal is under section 377 or section 378, to the accused, and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

(2)The Appellate Court shall then send for the record of the case, if such record is not already available in that Court and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.

(3)Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not, except with the leave of the Court, urge or be heard in support of any other ground.

Section 386: Powers of the Appellate Court

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may

(a)in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b)in an appeal from a conviction

(i)reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii)alter the finding, maintaining the sentence, or

(iii)with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c)in an appeal for enhancement of sentence

(i)reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court

competent to try the offence, or
(ii)alter the finding maintaining the sentence, or
(iii)With or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;
(d)in an appeal from any other order, alter or reverse such order;
(e)make any amendment or any consequential or incidental order that may be just or proper:
Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:
Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

Section 387: Judgments of subordinate Appellate Court

The rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate:
Provided that unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Section 388: Order of High Court on appeal to be certified to lower Court

(1)Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed and if such Court is that of a Judicial Magistrate other than the Chief Judicial Magistrate, the High Court's judgment or order shall be sent through the Chief Judicial Magistrate; and if such Court is that of an Executive Magistrate, the High Court's judgment or order shall be sent through the District Magistrate.
(2)The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

Section 389: Suspension of sentence pending the appeal; release of appellant on bail

(1)Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.
Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:
Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor/ to file an application for the cancellation of the bail.
(2)The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.
(3)Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,
(i)where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
(ii)where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.
(4)When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Section 391: Appellate Court may take further evidence or direct it to be taken

(1)In dealing with any appeal under this Chapter, the Appellate Court, if it finds additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.
(2)When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.
(3)The accused or his pleader shall have the right to be present when the additional evidence is taken.
(4)The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

Section 393: Finality of judgments and orders on appeal

Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the case provided for in section 377, section 378, sub-section (4) of section 384 or Chapter XXX:
Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits.
(a)an appeal against acquittal under section 378, arising out of the same case, or
(b)an appeal for the enhancement of sentence under section 377, arising out of the same case.
However, once the conviction has taken place the presumption of innocence is not available to the accused, and in fact the court would presume the accused to be guilty. Popular Muthiah Vs State rep by Inspector of Police 2006 6 SCALE 417

REFERENCE :

Reference to High court (s. 395)

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 therefore, and refer the same for the decision of the High Court.
2.A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of Sub-Section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.
3.Any Court making a reference to the High Court under Sub-Section (1) or Sub-Section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.

396. Disposal of case according to decision of High Court.-

(1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Court by which the reference was made, which shall dispose of the case conformably to the said order.
(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.

397. Calling for records to exercise powers of REVISION.-

(1)The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.
(2)The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
(3)If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

398. Power to order inquiry.-

On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or 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.

REVISION : it deals with section 399 – 405 code of Criminal Procedure, 1973

i. In cases where no appeal has been provided by law or in cases where the remedy of appeal has for any reason failed to secure fair justice the criminal procedure code (in short Cr PC) provides for another kind of review procedure, viz. revision. Revision lies both in pending and decided cases and it can be filed before a High Court or a Court of Session. Very wide discretionary powers have been conferred on the Sessions Court and the High Court.
ii. The *objec*t of the revision is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals.
ii.The *purpose* of revision is to enable the revision court to satisfy itself 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 the inferior criminal court.
iii.Under Section 397(1) of the Cr PC, 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 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.
iv.Under Section 398 Cr PC, the revision Court may make an order for *further inquiry*. Further inquiry entails supplemental inquiry upon fresh evidence. The power under Section 398, Cr PC is not co-extensive with Section 397, Cr PC but extends far wider as the record can 'otherwise' be examined by the revision Court without recourse to Section 397, Cr PC. v.Section 399, Cr PC deals with Sessions Judge's power of revision.

CASE: The Allahabad High Court in Om Pratap Singh vs. State 1995 Cr LJ 3887 has observed: - the revisional power of this Court under Sections 397 and 401, Cr PC is a kind of supervisory jurisdiction in order to prevent miscarriage of justice arising from the mis-conception of law or irregularity of procedure committed by the subordinate Courts. These two Sections do not confer unfettered jurisdiction on this Court for reappraisal of evidence. In fact, the revisional power of this Court is to see that justice is done in accordance with the recognized rules of criminal jurisprudence and the subordinate Courts do not exceed their jurisdiction or abuse their powers vested in them under the Code of Criminal Procedure.

High Court in a REVISION is empowered to interfere with an order of acquittal and direct fresh trail. While High Court sitting in appeal under Section 386 of the code, can convert finding of acquittal into one conviction, Section 401, subsection (3) debars conversion of acquittal into conviction. High Court, however, would not disturb a finding of fact unless it appears that trail court shut out any evidence, or overlooked any material evidence or admitted inadmissible evidence or where there has been manifest error on a point of fact.

Who can invoke the revisional jurisdiction?

i.Section 397(1) of the Cr PC does not say on whose motion Court may call for the records of the lower Court, but subsection (3) indicates that an aggrieved party may make an application. So far as High Court is concerned, Section 401(1) expressly authorizes the court to exercise power of revision suo motu apart from the application from a party. The complainant is entitled to move a revision even if state does not.
ii.When there was acquittal of the accused that was charged on a police report and the state did not file an appeal against it, the informant, since he had no right of appeal against the order, was held to be competent to apply for a revision.
iii.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 interest of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice (Kaptan Singh vs. State of Madhya Pradesh (1997) 4 supreme 211).

However there are two limitations: -

(1)Section 399(3) of Cr PC provides that in a case where any application for revision is made by or on behalf of any person before the Sessions Judge, no further proceeding by way of revision at the instance of such person shall be entertained by the High Court.
Suppose a proceeding under Section 145 Cr PC between X and Y terminated before the magistrate in favor of X. The criminal revision of Y before the Sessions Judge was dismissed. A criminal revision before the High Court at the instance of Y shall not be entertained. In the same illustration if Y's criminal revision before the Sessions Judge was allowed, a criminal revision to the High Court against the order of the Sessions Judge at the instance of X is maintainable.
(2)In a case where under the Code of Criminal Procedure an appeal lies but no appeal is brought, then according to Sub-section (4) of Section 401, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.
While Courts might have expressed different view on the scope of the bar under Sub-section (4) of Section 401, there can be no dispute that suo motu power of the court is not at all affected by the bar in sub-section(4) of Section 401.
Whether where a power is exercised under Section 397 of Cr PC, the High Court could exercise those very powers under Section 482, Cr PC.
Case: of Raj Kapoor vs. State (1980) 1 SCC 43, Justice Krishna Iyer, while distinguishing the power of the High Court under Section 397 vis-a-vis Section 482 of Cr PC observed that Section 397 or any of the provisions of Cr PC will not affect the amplitude of the inherent power preserved in Section 482.
The Apex Court in ***Mohit vs. State of***

UP (2013) 7 SCC, 789, observed that any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order. Orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trail cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.