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Trial Before Court of Sessions under CrPc: A Critical Evaluation

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The Law Relating to the Trial before a Court of Sessions under CrPc: A critical Evaluation

Abstract

Trial is an important process to determine whether the accused is guilty of an offence or note. The court takes the responsibility to judge cases relating to murders, theft, dacoity, pick-pocketing and other such cases. District court referred to as sessions court when it exercises its jurisdiction on criminal matters under Code of Criminal Procedure 1973. As per section 9 of Code of Criminal Procedure, 1973, the State government establishes court for every session division. The court presided over by a Judge, appointed by the High Court of that particular state. The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges in this court. In India, the Sessions Court has responsibility for adjudicating matters related to criminal cases. This research paper does a detailed analysis of the law relating to trial before a court of sessions under CrPc.

Introduction

In India, we follow the adversarial system. It implies that the Judge acts as a neutral party and hears the prosecution and defence on the point of law without actually taking part in the proceeding. Under the Criminal Procedure Code, 1973 every individual has a right to fair trial and hearing by an independent and unbiased tribunal. Section 303 confers a right upon the accused to be defended by a lawyer of his choice. Under Section 304 where an accused person is unable to represent his case by a pleader, the Court shall appoint a pleader for him at the state's expense. The accused is presumed to be innocent until proven guilty of the charges against him. Moreover, the accused has a right to cross-examine the witnesses of the prosecution. All offences under the Indian Penal Code, 1860 are inquired, investigated and tried according to the provisions of Criminal Procedure Code, 1973 except otherwise provided. The Code describes the procedure for the trial of a criminal case and its stages. In India, there is a uniform judicial system at the apex position being the Supreme Court, the High Court has the power of superintendence over all the courts and tribunal within the state. The CrPC divides criminal trial into sessions trial and magistrate trial. Whether an offence is triable by a Court of Session or Magistrate's Court is specified under the First Schedule of the Code. When a District Court exercises its jurisdiction over criminal matters it is referred as a Court of Session. A Court of Session is considered as a court of first instance which deals with offences which are of a serious nature at a district level. It is the highest criminal court in a district. According to Section 9 of the CrPC, the State Government is empowered to establish a Court for every sessions division and every Court of Session is presided over by a Judge appointed by the High Court.

Scope of the topic

This topic mainly covers the procedure and the steps followed in trials where the case has come up before the Court of Session.

Initial steps in the trial

Initially, a Magistrate takes cognizance of an offence and thereafter as per Section 209, he will commit the case to the Court of Sessions. A Magistrate is empowered under Section 190 to take cognizance of an offence upon receiving a complaint; upon a police report; upon information received from a person other than a police officer; or upon his knowledge. According to Section 193, Court of Session cannot take cognizance of an offence directly but the Court of Session is permitted to take cognizance of an offence without a case being committed to it if the Magistrate commits the case to it or if it acts as a special Court.

Under Section 207 and Section 208 the Magistrate is required to supply copies of documents like First Information Report, the statement recorded by the police or Magistrate, etc to the accused. "Under Section 209, if it appears to the magistrate that the offence is triable exclusively by the Court of Session, he may commit the case to the Court of Session and send all the documents and records to it and either grant bail or remand the accused into custody and shall also notify the Public Prosecutor. The procedure for trial before a Court of Session is mentioned from Section 225 to Section 237." As per Section 225, every trial before a Court of Session is conducted by a Public Prosecutor.

Opening case for prosecution

When the magistrate commits a case under Section 209 to the Court of Session and the accused appears or is brought before the Court, the prosecutor is required under Section 226 to open his case by explaining the charge against the accused and also states the evidence by which he will prove the guilt of the accused. At this stage, full details of the evidence need not be stated. The opening of the prosecution case must only be to matters which are necessary to follow the evidence. It is not necessary for a Public Prosecutor in opening the case for the prosecution to give full details of the evidence with which he intends to prove his case.

Discharge

The Court, on considering the documents and records of the case, and hearing the prosecution and the accused on the matter, shall discharge the accused if the Judge thinks that there is no sufficient ground to proceed against the accused. The Judge is required to record his reasons for discharging the accused under Section 227. It was held in State of Karnataka v. L. Muniswamy[1] that the object of this Section is to require the Judge to give reasons for discharging the accused is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground or not to proceed against the accused.

Framing of charge

Under Section 228, The Judge after considering the records of the case and the documents submitted along with it in evidence and hearing the prosecution and the defence, he thinks that there is a ground to presume that the accused has committed the offence and is exclusively triable by the Court of Session, he will frame a charge against the accused.

If the case is not exclusively triable by the Court of Session then the Judge may frame a charge against the accused and by order, transfer the case to the Chief Judicial Magistrate or any other Judicial Magistrate of First Class. He shall direct the accused to the Judicial Magistrate to whom the case has been transferred. The Magistrate shall then try the case in accordance with the procedure laid down for the trial of the warrant-cases instituted upon a police report.

If two views are possible regarding the guilt of the accused, then the one which is more favourable to the accused has to be taken.

It was held in Knati Bhadra Shah & anr v. State of West Bengal[2] while exercising power under Section 228 CrPC, the Judge is not required to record his reasons for framing the charges against the accused.

[1] https://indiankanoon.org/doc/548497/

[2]https://indiankanoon.org/doc/1735113/#:~:text=Kanti%20Bhadra%20Shah%20And%20Anr,Bengal%20on%205%20January%2C%202000&text=CASE%20NO.%3A%20Appeal%20(crl.)&text=The%20High%20Court%20quashed%20it,framed%20against%20appel%2Dlants%20afresh.

While framing charges, only the prima facie case has to be seen. At this stage, the Judge is not required to record a detailed order necessary to see whether the case is beyond reasonable doubt as held by the Supreme Court in Bhawna Bai v. Ghanshyam & Ors[3].

In Rukmini Narvekar v. Vijaya Satardekar[4] it was ruled by the Court that the accused cannot produce any evidence at the stage of framing of charge and only those materials can be taken into consideration which is specified in Section 227 at the time of framing charges.

Explaining the charge to the accused

Section 228(2) says that when a case is exclusively triable by the Court of Session and the Judge frames a charge against the accused, he has to read and explain the charge and ask the accused if he wants to plead guilty or claims to be tried. The Judge shall ensure that the charge read and explained to the accused have been fully understood by him before he is asked to plead guilty. In Banwari v. State of UP, the Court held that default in reading out or explaining the charge to the accused would not vitiate the trial unless it has been shown that non-compliance with Section 228 has resulted in prejudice to the accused.

Conviction on plea of guilty

The accused may plead guilty under Section 229 or he can refuse to plead. The Court under Section 229 has the discretion to accept the plea of guilty. This discretion has to be applied with care and not arbitrarily. Also, the Judge has to ensure that the plea has been made voluntarily and not under any inducement otherwise it would be violative of the Provisions of the Constitution of India. It was held in Queen Empress v. Bhadu[5] that the plea of guilty must be in unambiguous terms otherwise such a plea is considered as equivalent to a plea of not guilty. Section 229 states that if an accused pleads guilty then the Judge shall convict him as per his discretion and shall record the same. The Court cannot convict an accused on the basis of the plea of guilty where the offence is of a nature in which the punishment is death or imprisonment for life. In Hasaruddin Mohommad V Emperor[6], the Court held that it will be reluctant for the Court to convict a person accused of an offence in which the punishment is

[3] https://indiankanoon.org/doc/84480745/
[4] https://indiankanoon.org/doc/1160727/
[5] https://indiankanoon.org/doc/1775772/
[6]https://indiankanoon.org/doc/1355665/#:~:text=The%20accused%20in%20this%20case,thereby%20committing%20an%20offence%20under

death or life imprisonment on the basis of his plea of guilty. The right of appeal of the accused is curtailed by Section 375 If the accused is convicted on the basis of his plea of guilty.

Date for prosecution evidence

Under Section 230, the Judge will fix a date for the examination of witnesses if the accused has refused to plead guilty or does not plead guilty, or if he claims to be tried or if he is not convicted under Section 229. On an application of the prosecution, the Judge will issue a process for compelling the attendance of witnesses or to produce any document or any other thing.

Evidence for prosecution

As provided by Section 273, all the evidence must be taken in the presence of the accused or in his absence in the presence of his pleader during the course of a trial or proceeding.

Examination of witnesses

When the date is so fixed (as mentioned under Section 230), The Judge will proceed to take all the evidence that may be produced by the prosecution in his support as per Section 231. The Judge has the discretion to permit cross-examination of any witness to be deferred until the other witness or witnesses have been examined or recall any witness for further cross-examination.

Section 137 of the Indian Evidence Act, 1872 ('IEA') states that the examination of a witness shall be done by the party who calls him (prosecution) and it shall be called examination-in-chief. The cross-examination of the witness is done by the adverse party (defence). The re-examination is done subsequent to cross-examination by the prosecution

Section 138 of the IEA, 1872 lays down the order of examination of the witnesses. It says that the witness should be first examined in chief and then cross-examined. The examination in chief is done by the party who calls the witness and cross-examination is done by the adverse party. If the party who called the witness so desires, can re-examine the witness with the permission of the Court.

The examination-in-chief and cross-examination should be connected to the relevant facts of the case. However, the cross-examination does not need to be restricted to the facts to which the witness has testified in examination-in-chief. The re-examination shall be related to the explanation of the matters referred to in the cross-examination. If any new matter has arisen in the re-examination, the defence may further cross-examine the witness upon that matter. The objective behind re-examination is to offer the witness a chance to clarify any issues raised during the cross-examination and is therefore constrained only to those issues that were raised during the cross-examination. In Ram Prasad v. State of UP[7] it was held that, if the court finds that the prosecution had not examined witness for reasons not tenable or proper, the Court would be justified in drawing an inference adverse to the prosecution.

The Court observed in State of Kerala v. Rasheed that a balance must be struck between the rights of the accused and the prerogative of the prosecution to lead the evidence while deciding an application under Section 231(2). The following factors must be considered:

- the possibility of undue influence,
- threats,
- that non-deferral would enable subsequent witnesses giving evidence on similar fact to tailor their testimony to circumvent the defence strategy,
- of loss of memory of the witness whose examination-in-chief has been completed.

Record of the evidence

According to Section 276, the evidence of each witness in all trials before a Court of Session shall be written down by the Presiding Judge himself or under his dictation or under his direction and superintendence by the officer of the Court appointed by the Judge in this behalf. Such evidence is usually taken down in a narrative form. The presiding Judge may also write it down in question-answer form as per his discretion. The evidence so taken down must be signed by the Judge and form a part of the record.

It has been provided under Section 278(1) that when the evidence of each witness is complete, it shall be read over in the presence of the accused or in his absence in the presence of his

[7] https://www.casemine.com/judgement/in/5608ea47e4b0149711115c28#:~:text=The%20appellant%20Ram%20Prasad%2C%20who,the%20night%20between%205%2F6.12.

pleader and shall if necessary be corrected. Also, as per Section 279 If any evidence is given in a language that the accused or his lawyer does not understand, it shall be interpreted to the accused or his lawyer in the language understood by him.

Steps to follow the prosecution evidence

For procuring the evidence of the prosecution the following steps have to be followed as mentioned below:

Oral arguments and memorandum of arguments on behalf of the prosecution

Under Section 314 the prosecutor has to submit his oral arguments after the conclusion of prosecution evidence and before any other steps in the proceedings are taken. It is also necessary to submit a memorandum, in brief, stating the arguments in his favour and a copy of that memorandum should be given to the opposite party. Adjournment for filing of written argument shall only be given if the court thinks it proper and record reasons for the same. The court will regulate an oral argument If it thinks it is irrelevant or not concise. The prosecution argument at this stage helps the court to conduct an examination of the opposite party and seeking his explanation on the issue raised by the prosecution.

Explanation of the accused

Under Section 313 the Court may examine the accused after the evidence for the prosecution has been taken. The object of this Section is to give an opportunity to the accused of explaining any circumstances that seem to appear against him. After the witness for the prosecution have been examined and before the accused is called upon for his defence, Section 313(1)(b) requires the court to question the accused person generally on the case for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him.

It was ruled by the Supreme Court in Shivaji Sahabrao Bobade v. State of Maharashtra[8], it is basic that the prisoner's attention should be attracted to each inculpatory material in order to allow him to clarify.

It was held in Asraf Ali v. State of Assam[9] that, if a matter is significant against the accused and the conviction is proposed to be founded on it is correct and legitimate then the accused be examined concerning the issue and be given a chance to clarify it.

Hearing the parties

Section 232 gives an opportunity to both the prosecution and defence to address the court before calling upon the accused to enter upon his defence and to adduce evidence in support of it. The comments of the parties should be related to the evidence given by the prosecution and the examination of the accused.

Order of the acquittal

An accused may be acquitted if there is no evidence against him that he has committed the offence. Under Section 232 the Judge will record an order of acquittal in favour of the accused if he thinks that there is no evidence against the accused that he has committed the offence.

Steps to follow the defence evidence

As per Section 233 when the accused is not convicted under Section 232, he shall be called upon to produce evidence he may have in his support. If the accused desires he can give evidence in his defence in a written form and the Judge shall file it with the record. The steps to be followed for obtaining the evidence of the defence are discussed below.

Court witnesses, if any

[8] https://indiankanoon.org/doc/1035123/

[9] https://indiankanoon.org/doc/1445922/#:~:text=Accused%20Asraf%20Ali%20forbade%20from,been%20doing%20inside%20the%20house.

As per Section 311, the Court can at any stage of any inquiry, trial or other proceedings, summon and examine any person as a court witness if his evidence appears to the court that it is essential for the just decision of the case.

Arguments

Under Section 234, the prosecution shall sum up his case and the accused or his pleader shall be entitled to reply, and if any point of law is raised by the accused or his pleader, the prosecution may with due permission of the Judge make his submission with regard to point of law. It is to be noted that Section 314 also talks about the arguments of the parties. However, Section 234 provides that after the evidence for the defence is concluded it is for the prosecution to sum up the case, and then the defence will be entitled to reply. Section 234 is a special one regarding argument whereas Section 314 is a general provision and therefore Section 234 would prevail over Section 314. The reason being it is a well-settled law that when there is any inconsistency between a general and a special law, the special one would prevail.

Judgment and connected matters

After hearing the arguments of the prosecution and defence the Court will give judgement in a case. It is the stage where the accused is either acquitted or convicted.

Judgment

As per Section 235, a Judge will pronounce a judgement of acquittal or conviction after hearing the arguments of both the parties i.e., the prosecution and defence and on point of law (if any). However, considering the character of the offender, the circumstances of the case and the nature of the offence, the Judge may as per Section 360 decide to release the offender on probation of good conduct. If the accused is acquitted, the acquittal will be done according to the procedure laid down under Section 232 and if he is convicted, he shall be dealt according to Section 235.

In Narpal Singh v. State of Haryana[10] it was held that, in case of non-compliance with this provision, the case may be remanded to the Sessions Judge for retrial on the question of

[10] https://indiankanoon.org/doc/438408/

sentence only. It is not necessary for the Judge to hold a new trial altogether it will be restricted to the question of sentence only.

Procedure to follow the order of conviction

After conviction, the Judge will hear the accused and then pass a sentence under Section 235. The Judge while passing a sentence shall try to gather all information that influences or relates to the sentence of the accused. The provisions of Section 235(2) are mandatory and should be complied with strictly as held by the Court. The purpose of Section 235 is to offer a chance to the accused to adduce evidence of any mitigating circumstances in his favour. The accused should be explicitly asked with respect to what he needs to state about his sentence and whether he wants to give any proof on his side in order to mitigate his sentence.

On this point, the Apex Court in Santa Singh v. State of Punjab[11] held that the Judge should first pass a sentence of conviction or acquittal. If the accused is convicted, he shall be heard on the question of sentence and only then the Court shall proceed to pass a sentence against him.

In Bacchan Singh v. State of Punjab[12], it was ruled by the Court that this Section provides for a bifurcated trial and specifically gives to the accused person a right of pre-sentence hearing which may not be strictly relevant to or connected with the particular crime under inquiry but may have a bearing on the choice of the sentence.

Procedure in case of previous conviction

Section 236 talks about previous convictions. It says that if an accused is charged with a convicted previously under Section 211(7) and he does not admit that he has been previously convicted with the alleged charge. The Judge after convicting the accused under Section 229 or Section 235 may call for evidence of the accused of such previous conviction and shall record findings, in case the accused is liable to enhanced punishment or punishment of a different kind. The proviso to this Section mentions that such charge shall not be read out by the Judge, nor shall the accused be asked to plead nor shall the prosecution refer to such previous conviction.

[11] https://indiankanoon.org/doc/819576/
[12] https://indiankanoon.org/doc/307021/

Section 236 provides for a special procedure for determining liability to enhanced punishment as a consequence of previous conviction. Also, prohibiting the proof of previous conviction to be given until and unless the accused is convicted, is to prevent the accused from being prejudiced at the trial.

Procedures in cases of defamation of high dignitaries and public servants

Under Section 199(2) the Court of Session may take cognizance of an offence, without the case being committed to it when any offence of defamation is committed against a person who is at that time, President of India, the Vice-President of India, Governor of a State, or any Public servant in the Union or State when a complaint is made to it by the Public Prosecutor in writing.

Section 237 requires the Court of Sessions to try the case in accordance with the procedure for trial of warrant-cases instituted otherwise than on a police report before a Magistrate Court when it takes cognizance of an offence under Section 199 (2).

The proviso to Section 237(1) says that a person shall be examined as a prosecution witness against whom the offence is alleged to have been committed unless the Court of Session otherwise directs. The Court has to record the reasons for it.

Each trial under Section 237 is to be conducted in camera if the Court thinks or if either of the party so desires. If the Court discharges or acquits all or any of the accused and the Court thinks that there is no reasonable cause of making an accusation against the accused or any of them. A show-cause notice for grant of compensation may be issued to those allegedly defamed.

The Court awards compensation to the accused or any of them up to one thousand rupees after considering the show cause and recording reasons for the same. The compensation awarded shall be recovered as if it were a fine imposed by the magistrate. A person who has been made liable to pay compensation shall not be exempted from any civil or criminal liability. If any sum has already been paid to the accused that sum shall be taken into consideration while paying compensation in any subsequent proceeding relating to the same matter.

The award of compensation does not apply to President, Vice-President, Governor of the State or Administrator of Union territory.

A person can also appeal to the High Court against the order of the Court under this Section.

Conclusion

The above article outlines all the procedures relating to the sessions trial. The Code of Criminal Procedure provides an opportunity for the accused for fair trial and makes an effort to avoid any delay in investigation or trial. The Judge in every case ensures that the accused is given a fair opportunity of hearing and defending his case. The Code also provides for legal aid to an indigent accused who is unable to engage a lawyer in compliance with the constitutional requirements and also as required by Section 304 so that any person accused of committing an offence is not wrongly convicted and justice is served.

References

RV Kelkar, Lectures on Criminal Procedure Code, Eastern Book Company, (6th ed. 2017).

Ratanlal & Dhirajlal, The Code of Criminal Procedure, Wadhwa & Company Nagpur, (17th ed. 2004).

Basic elements of Criminal Procedure Code-Sessions Trial.

The Code of Criminal Procedure, 1973, Act No. 22 of 2018, Act of Parliament, 1973 (India).