

COMMENTARY ON CRIMINAL RULES OF PRACTICE IN ANDHRA PRADESH

*Being an exhaustive discussion on the Criminal Rules of Practice and Circular Orders 1990 in juxtaposition
with the corresponding provisions of the Code of Criminal Procedure 1973
(As amended upto date)*

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The essence of criminal justice is that no innocent person would even be put upon his trial and no guilty person be acquitted. But ideals are impossible of attainment. A wise law can only provide machinery, which will make it as little difficult as possible to approach that ideal. Criminal Procedure, or the Law of Criminal Procedure, is one such body of rules which provides the means and lays down the methods by which the facts concerning an offence committed, or supposed to have been committed, may be ascertained as speedily and accurately as possible; by which persons reasonably supposed to be guilty may be brought before the Courts; by which, when this has been done, an impartial inquiry before a Court may be secured; by which the Court are to reach their decisions after full consideration of all available and admissible evidence which it may be proper to take; and by which, when there is a conviction, the infliction of the penalty properly ordered by the Court is to be secured.

While the Criminal Procedure Code lays down the procedure to be followed in every investigation or inquiry into or trial for every offence, whether under the Penal Code or under any other law, the Criminal Rules of Practice are made by the High Courts for their respective procedure in exercise of the powers conferred by Article 227 of the Constitution of India and Section 477 of the Criminal Procedure Code. These rules form part of the procedure for trial of the criminal

cases by Courts subordinate to High Court, in addition to the procedure laid down by the Code of Criminal Procedure. Thus, the body of the Code is fundamental and is unalterable except by Legislature, while the Rules are concerned with the details and machinery. The Code creates jurisdiction while the Rules indicate the mode in which they are to be exercised. In other words, the Rules amplify and/or supplement the provisions under the Criminal Procedure Code. The body of the Code expressed in more general terms has to be read in conjunction with the more particular provisions of the Rules.

This book endeavours to provide an integrated study of the Code of Criminal Procedure and the Rule of Practice. An attempt has been made to explain the Rules of Practice by examining and explaining in what way a certain Rule supplements or amplifies the provisions under the corresponding Section in the Code, in such order and manner as, it is hoped, may make clear the reasons for providing the particular Rule and the basic principles underlying.

There are numerous able commentaries on the Code containing references to, and accounts of, rulings of the Supreme Court and various High Courts. The purpose of present book, however, is to discuss the provisions of the Code in juxtaposition with the Rules of Criminal Practice framed by the High Court of Andhra Pradesh to regulate its own procedure in

criminal courts. As stated by the maxim "cursus curiae est lex curiae" – the course of the Court (that is the course of procedure and practice) is the law of the Court – The ordinary practice or course of procedure is the law of the Court in the sense that it is the law enacted by the Court by long usage. Every High Court has power over its own forms of process and practice, where these are not specially regulated, by the higher authority of an Act of Parliament. "Every Court is the guardian of its own records and master of its own practice; and where a practice has existed it is convenient, except in cases of extreme urgency and necessity, to adhere to it, because it is the practice, even though no reason can be assigned for it, for an inveterate practice in the law generally stands upon principles that are founded in justice and convenience." [Broom's *Legal Maxims* (Tenth Edition) at p. 94]. While the procedure enacted by the High Court, may be altered by the High Court, as it deems fit or expedient, the procedure enacted by legislature can only be altered by the same authority, except in the case, where, in enacting the procedure, the legislature has conferred the power upon the Court itself to alter or amend such procedure.

The Criminal Rules of Practice promulgated by the High Court of Andhra Pradesh in exercise of the powers conferred by Article 227 of the Constitution of India and Section 477 of the Code of Criminal Procedure, 1973 and of all other powers hereunto enabling, *i.e.*, powers resulting from their origin, history, background and tradition, which included the power to make rules to regulate their own procedure and practice for the guidance of the Criminal Courts in the State are statutory rules having the force of law. Therefore, the course of procedure enacted by the High Court ought always to be observed and adhered to.

The book endeavours to elucidate the Criminal Rules of Practice in the light of corresponding provisions of the Code of Criminal Procedure and the judicial interpretations, which the provisions have received through the decisions of the High Court and the Supreme Court of India. To

have a clear understanding of the position of law and to keep track of march of law, all those decisions which introduce or appear to introduce a new or materially modified rule, or which tends to settle a question, the law relating to which has been doubtful, or decisions which constitute an exposition of law and found to be instructive have been discussed elaborately. Reference has been made to select decisions of other High Courts also wherever found necessary. Materials though not forming part of the Rules as such, but found necessary in the context and relevant to subject matter of the book, have been annexed to the chapters they are relatable.

The first part of the book deals with power of High Court to make rules in general and Rule making power of Andhra Pradesh High Court in particular, scope of criminal rules of practice framed by the High Court and rules of construction. This part also contains two important annexures:

- (i) *Criminal trial*: Constitutional mandate; Principle of fair trial; Role/duty of a judge/court during criminal trial, etc.; and,
- (ii) *A note on Judicial Code of Conduct*: Judicial discipline; Principle of comity; Judges bound by precedents and procedure; Value and binding nature of precedents

The second part of the book deals with the Criminal Rules of Practice and Circulars Orders, 1990. Though generally the book follows the arrangement given in the Rules, certain chapters have been further classified for the sake of convenience of the reader and to facilitate quick location of the desired Rules. Marginal notes have been created, wherever found necessary (where not given in the Rules), for easy reference. Such notes have been given in brackets. In addition to elaborate discussion under various Rules certain annexures have been appended to certain Rules for contextual discussion on the subjects covered by the respective rules. [Confession: Evidentiary value of confession (Rule 32); Role of Identification Tests (Rule 34); Judgment: Form and Contents of (Rules 65 to 71)]. By the adoption of a comprehensive

and logical method of treatment in a singularly attractive and convenient form, an attempt has been made to instill clearness and readable interest in the discussion.

Apart from providing a detailed index to contents of the book and parallel mapping of the vast contents of book, running through the first to the last page, a Fact Finder, in the

form of an intensive and extensive, but precise index-cum-ready referencer has also been added to facilitate easy and quick location of desired information contained under numerous Rules.

It is hoped that the book will be found very exhaustive making it self-contained and efficient to answer the purposes it is intended to serve.

HANDBOOK OF LAW RELATING TO CONTROL OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

By

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Man was happy to have discovered drugs, which he took to find some solace from the bitterness of life and to escape from vale of misery, but ended up as a prisoner of addiction. The drugs, which he thought to be boon, turned out to be a malediction. But the temptation and the craving for the 'forbidden fruit' was so unruly that he found it hard to tame notwithstanding the cramps it caused. Initiated into by friends and foes, more and more men were drawn to it only to land in the booby trap. Across the years drug abuse and drug addiction became a social malady. It was spreading ruin, causing deleterious effects and deadly impact on the society as a whole. So much so that statutory control had to be exercised over narcotic drugs through certain State and Central enactments principally through the Opium Act 1856, the Opium Act 1878 and the Dangerous Drugs Act 1930. However, the menace assumed serious and alarming proportions over the years. New drugs of addiction, which have come to be known as psychotropic substances appeared on the scene. Drug trafficking, trading and its use, became a global phenomena and acquired

the dimensions of an epidemic. It was seen as a booming industry by smugglers and underworld, which led to clandestine smuggling of narcotic drugs and psychotropic substances into this country further proliferating the devastating menace. The organized activities of the underworld and illegal trafficking in such drugs and substances led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes. It had the effect of producing a sick society and harmful culture. While drug addiction was eating into the vitals of the society, it was noticed that drug trafficking was not only eating into the vitals of the economy of the country and affecting the economic policies, but illicit money generated by drug trafficking was being used for illicit activities including encouragement of terrorism.

Existing laws were being found deficient to deal with this menace. That apart, since the enactment of these Acts, a vast body of international law in the field of narcotics control had evolved through various international treaties and protocols, to which the Government of India was also a party