CHAPTER XIII
PREVENTIVE ACTION OF THE POLICE

149. Police to prevent cognizable offences.— Every police officer may interpose for hte purpose of preventing,and shall, to the best of his ability, prevent, the commission of any cognizable offence.

150. Information of design to commit such offences.— Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordiante, and to any other officer whose duty it is to prevent or take cognizable of the commission of any such offence.

151. Arrest to prevent such offences.— A police officer knowing of a design to commit any cognizable offence may arrest, without orders froma Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

152. Prevention of injury to public property.— A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immovable, or the removal or injury of any public landmark or buy or other mark used for navigation.

153. Inspection of weights and measures.— (1) Any officer in charge of a police station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART - V

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

CHAPTER XIV

154. ***Information in cognizable cases.***— 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 Government may prescribe in this behalf.

155. Information in non-cognizable 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 in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Investingation into non cognizable cases.— (2) No police officer shall investigate a non-cognizable case without the order to a Magistrate of the first or second class having power to try such case or send the same 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.

156. Investigation into cognizable cases.— (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 XV relating to the place of inquiry or trial.

(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 nto empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

157. Procedure where cognizable offence suspected.— (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 subordiante officers not being below such rank as the Government may, by generla or special roder, 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 as follows :-

Where local investigation dispensed with.— (a) when any 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,

Where police officer in charge sees no sufficient ground for investigation.— (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 said report his reasons for not fully complying with the requirments of that sub-section, and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Government, the fact that he will not investigate the case or cause it to be investigated.

158. Reports under section 157 how submitted.— (1) Every report sent to a Magistrate under section 157 shall, if the Government so directs, be submitted through such superior officer of police as the 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 of preliminary inquiry.— Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit at once proceed, or depute any Magistrate subordiante to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

160. Police officer's power to require attendance of witnesses.— 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 circumstances of the case; and such person shall attend as so required.

161. Examination of witnesses by police.— (1) Any police officer makign an investigation under this Chapter or any police officer not below such rank as the 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 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 record of the statement, of each such person whose statement he records.

162. Statements to police not to be signed; use of such 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 into 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, the court shall on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Evidence Act, 1872. 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 :

Provided, further that, if the court is of opinion that any part of any such statement is not relevant to the subject matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Evidence Act, 1872 or to affect the provisions of section 27 of that Act.

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 the Evidence Act, 1872, section 24.

(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.

164. Power to record statements and confessions.— (1) Any Metropolitan Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Government may, if he is not a police-officer record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion best fitted for the circumstances of the case. Such confessions shall

be recorded and signed in the manner provided in section 364, and such statements or confessions shall them be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A 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 no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he 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."

Explanation.— It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

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.

Provided that no such officer shall search, or cause search to be made, for anything which is in the custody of a bank or banker as defined in the Bankers' Books Evidence Act, 1891 (XVIII of 1891), and relates, or might disclose any information which relates, to the bank account of any person except : —

(a) for the purpose of investigation an offence under sections 403, 406, 408 and 409 and sections 421 to 424 (both inclusive) and sections 465 to 477A (both inclusive) of the Penal Code with the prior permission in writing of a Sessions Judge; and

(b) in other cases, with the prior permission in writing of the High Court Division.

(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 102 and section 103 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 with a copy of the same by the Magistrate :

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

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 make 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 stations 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 an 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 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 103, and shall also send to the , nearest Magistrate empowered to take cognizance of the offence) copies of the records referred to in section 165, sub-sections (1) and (3).

(5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4) :

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

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 61, 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 Magistrate a copy of the entries in the diary hereinafter prescribed relating tot he 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. If he has not jurisdiction to try the case or send it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorise detention in the custody of the police.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the Chief Metropolitan Magistrate, District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

[16][(5) If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation:-

(a) the Magistrate empowered to take cognizance of such offence or making the order for investigation may, if the offence to which the investigation relates is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Magistrate; and

(b) the court of sessions may, if the offence to which the investigation relates is punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Court:

Provided that if an accused is not released on bail under this sub-section, the Magistrate or, as the case may be, the Court of Sessions shall record the reasons for it :

Provided further that in cases in which sanction of appropriate authority is required to be obtained under the provisions of the relevant law for prosecution of the acoused, the time taken for obtaining such sanction shall be excluded from the period specified in this sub-section.

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16. Sub-section (5) is inserted and Sub-section (6), (7) and (7A) are omitted by Act XLII of 1992, w. e. f. 1. 11. 92.

Explanation:-The time taken for obtaining sanction shall commence from the day the case, with all necessary documents, is submitted for consideration of the appropriate authority and be deemed to end on the day of the receipt of the sanction order of the authority.

(6)
(7) Omitted by Act XLII of 1992, w. e. f. 1. 11. 92.
(7A)

(8) The provisions of sub-section(5)shall not apply to the investigation of an offence under section 400 or section 401 of the Penal Code,1860 (Act XLV or 1960).]

Note

This section intends to prevent any possible abuse by the police of their power in trying to make discoveries of crime by means of wrongful confinement. This section appears to be supplimentary to section 61. On a reading of both the sections (61 & 167) it transpires that lagislature contemplated that the investigations of the offence in the case of a person arrested without a warrant should be completed in the first instance within 24 hours U/S. 61 or if not then within 15 days U/S. 167.

This section also provides for remand of an accused to police custody by a Magistrate.It is imperative on a Magistrate to give reasons for granting a remand and this be done on scrutiny of the police diaries.

Police Investigation and Time Limit:

It is seldom found an investigation getting completed within 24 hours or 15 days and in serious cases inordinate delay takes place.This made the legislature anxious and as a consequence Time Limit is introduced in the investigation of cases vide Ordinance No. XXIV of1982 with effect from 21.8.82 and to materialise the same sub-section (5) to (8) were newly added introducing specified period for completion of an investigation, in default, to stop further investigation and to release the accused. However, provisions were also made for extension of the period of time limit and for revival of an investigation which got stopped. But these provisions came under serious criticism (some of such criticisms found place in the 2nd Edition of this book) and created impediment in bringing the hardened criminals to task and this ultimately led to omit sub-section (6) , (7) and (7A) and to substitute sub-section (5) with new renderings vide Act 42 of 1992 with effect from 1-11-92.

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16. Sub-section (5) is inserted and Sub-section (6), (7) and (7A) are omitted by Act XLII of 1992 , w. e. f. 1. 11. 92.

The new sub-section (5) provides that if the investigation is not completed within 120 days from (a) the date of receipt of the information relating to the commission of the offence or (b) the order of the Magistrate for such investigation, accused be enlarged on bail by —

(i) the Magistrate in respect of offence attracting punishment upto ten years imprisonment, and

(ii) the Court of Sessions in respect of offences punishable with death, imprisonment for life or imprisonment exceeding ten years.

However, bail may very well be refused in appropriate cases on assigning reasons thereof.

With respect to cases which requires sanction of the appropriate authority before preceeding against the accused the time consumed in obtaining such sanction is to be excluded from the period of 120 days allotted for completion of the investigation. Time for sanction will run from the date on which prayer is made in this regard to the appropriate authority by sending all necessary papers and will end with the receipt of the order from the authority.

Period for completion of investigation now (since1-11-1992) is 120 days. Time is to be counted in terms of Calender days and not in terms of working days.

Time Limit is not applicable in gang cases under section 400 and 401 of the Penal Code, 1860.

Omission of sub-section (6), (7) and (7A) and substitution of sub-section (5) have brought in a significant change in the investigation of cases. Earlier in view of those provisions investigation of a case had to be concluded within the specified time or the extended time and that failure to do so used to follow with judicial consequences by stopping of further investigation and releasing of the accuseds and this made the provision of time-limit a mandatory one. But now if the investigation fails to be concluded within the stipulated period the law directs that the enlargement of the accused on bail may be considered and the spirit of the provision appears to be to consider the bail matter liberally though the prayer for bail may be rejected on reasonable grounds. However, the investigation is not going to be stopped or accuseds released and this has made the provision of time limit a DIRECTORY one.

168. Report of investigation by sub-ordinate 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 or to the police officer making the investigation 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 send him for trial.

170. Case 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 send 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 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 Metropolitan Magistrate, District Magistrate or Sub-divisional 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) Repealed.

(5) 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. Complainants and witnesses not to be required to accompany police officer.— [2][(1) No complainant or witness on his way to the court of the Magistrate shall be required to accompany a police officer,

Complainants and witnesses not to be subject to restraint

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond :

Recusant complainant or witness may be forwarded in custody.

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.

[2][(2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the police officer to ensure that the complainant or the witness appears before the Court at the time of hearing of the case.]

Note

The original Section 171 has been renumbered as Sub-Section (1) and thereafter Sub-Section (2) has been added by Ordinance No. XXIV of 1982. This newly added provision has assigned the task of producing witnesses in court at the time of trial upon the police and thereby the courts have been kept free to dispose of a case without consuming unnecessary time where prosecution fails to produce witnesses even though all modes of processes are issued from the court. This issuance of processes need be ensured before taking any step under the section.

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

2. *By Ordn. XXIV of 1982 ; w. e. f. 21 - 8 - 82.*

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. 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 the Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

173. Report of police officer.— (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police station shall -

(a) forward to a Magistrate empowered to take cognizance of the offence on a police report a report, in the form prescribed by the Government setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused if arrested has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the 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.

(2) Where a superior office of police has been appointed under section 158, the report shall in any cases in which the 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.

(3) 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.

(3A) 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 sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(3B) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (1) has been forwarded to the Magistrate and, whereupon 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 (1) to (3A) 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 (1).

(4) A copy of any report forward under this section shall on application be furnished to the accused before the commencement of the inquiry or trial :

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

174. Police to inquire and report on suicide, etc.— The officer in charge of a police station or some other police officer specially empowered by the Government in that behalf, on receiving information that a person -

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence, shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Government, or by any general or special order the Chief Metropolitan Magistrate, the District Magistrate 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 neighborhood, 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 infflicted.

Provided that, unless the Government otherwise directs, it shall not be necessary under this sub-section, in any case where the death of any person has been caused by enemy action, to make any investigation or to draw up any report or to send any intimation to a Magistrate empowered to hold inquests.

(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 Chief Metropolitan Magistrate, 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 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 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.

(5) The following Magistrates are empowered to hold inquests, namely, the Chief Metropolitan Magistrate, any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, and any Magistrate especially empowered in this behalf by the Government the Chief Metropolitan Magistrate 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. 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 section 174, clauses (a), (b) and (c) of sub-section (1), 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. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

Power to disinter corpses.— (2) 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 disinterred and examined.

PART - VI
PROCEEDINGS IN PROSECUTIONS

CHAPTER - XV
OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.— Place of Inquiry or Trial

177. Ordinary place of inquiry and trial.— Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

178. Power to order cases to be tried in different sessions divisions.— Notwithstanding anything contained in section 177, the Government may direct that any cases or class of cases sent for trial in any district may be tried in any sessions division :

Proviso - [3][Omitted]

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3. *By Ordn. LX of 1982 : w. e. f. 30 -12 - 82*

Note

The proviso contained some conditions on such direction of Government as mentioned in section 178 which has been done away with.

179. Accused triable in district where act is done or where consequence ensues.— When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations

(a) A is wounded within the local limits of the jurisdictions of Court X, and dies within the localities of the jurisdiction of Court Z. The offence of the culpable homicide of A may be required into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the locallimits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y, or Court Z, to in follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either by X or Y.

(d) A is wounded in Dhaka, and dies of his wounds in Chittagong. The offence of causing A's death may be inquired into and tried in Chittagong.

180. Place of trial where act is 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, a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations

(a) A charge of abatement may be inquired into or tried either by the court within the local limits of whose jurisdiction the abatement was committed or by the court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any court, within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

181. Being a thug or belonging to a gang of dacoits, escape from custody, etc.— (1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into tried by a court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust.— (2) The offence of criminal misappropriation or of criminal brech of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

(3).Theft.— The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

(4) Kidnapping and abduction.— The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

182. Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts.— When it is uncertain in which of several local areas an offence was committed, or

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

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

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.

183. Offence committed on a journey.— An offence committed whilst the offender is the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

184. [Offences against Railway, Telegraph, Post Office and Arms Acts,] Rep. by the Federal Laws (Revition and Declaration) Act, 1951 (XXVI of 1951), s. 3 and Second Schedule.

185. High Court Division to decide in case of doubt, district where inquiry or trial shall take place.— (1) Whenever a question arises as to which of two or more courts subordinate to High Court Division ought to inquire into or try any offence, it shall be decided by the High Court Division.

186. Power to issue summons of warrant for offence committed beyond local jurisdiction.— (1) When a Metropolitan Magistrate a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without Bangladesh an offence which cannot, under the provisions of sections 177 to 183 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in Bangladesh, such Magistrate may inquire into the offence as if it had been committed within such local limits and compel such person in 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 bailable, take a bond with or without sureties for his appearance before such Magistrate.

Magistrate's procedure on arrest.— (2) 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 Division.

187. Procedure where warrant issued by subordinate Magistrate.— (1) If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Metropolitan Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person in which case the person arrested shall be delivered to the police officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186 such Magistrate shall send such person to such court.

188. Liability for offence committed outside Bangladesh.— When a citizen of Bangladesh commits an offence at any place without and beyond the limits of Bangladesh, or when any person commits an offence on any ship or aircraft registered in Bangladesh wherever it may be,

he may be dealt with in respect of such offence as if it had been committed at any place within Bangladesh at which he may be found :

Political Agents to certify fitness of inquiry into charge.

Provided that notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be inquired into in Bangladesh except with the sanction of the Government:

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in Bangladesh shall be a bar to further proceedings against him under the Extradition Act, 1974, in respect of the same offence in any territory beyond the limits of Bangladesh.

189. Power to direct copies of depositions and exhibits to be received in evidence.— Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

B. - Conditions requisite for Initiation of Proceedings

190. Cognizance of offences by Magistrates.— (1) Except as hereinafter provided, any Metropolitan Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence —

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer;

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Government, or the District Magistrate subject to the general or special orders of the Government, may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or send for trial.

(3) The government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or send for trial.

191. Transfer on application of accused.—. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be sent to the Court of Session or transferred to another Magistrate.

192. Transfer of cases by Magistrates.— (1) The Chief Metropolitan Magistrate or any District Magistrate or Sub-division Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or send him for trial; and such Magistrate may dispose of the case accordingly.

193. Cognizance of offences by Courts of Session.— (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been sent to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Government by general or special order may direct them to try, or as the Sessions Judge of the division, by general or special order, may make order to them for trial.

194. Omitted by Ordn. XLIX of 1978.

195. Prosecution for contempt of lawful authority of public servants.— (1) No Court shall take cognizance -(a) of any offence punishable under sections 172 to 188 of the Penal Code except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

Prosecution for certain offences against public justice.— (b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

Prosecution for certain offences relating to documents given in evidence. - (c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed

by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1), the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Registration Act, 1908.

(3) For the purposes of this section, a Court shall be deemed to be subordinate, to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :

Provided that -

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offence named therein, apply also to criminal conspiracies to commit such offences and to the abatement of such offences, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

196. Prosecution for offences against the State.— No court shall take cognizance of any offence punishable under Chapter VI or IXA of the Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from the Government, or some officer empowered in this behalf by the Government.

196A. Prosecution for certain classes of criminal conspiracy.— No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Penal Code.

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the Government or some officer empowered in this behalf by the Government, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the Government, or the Chief Metropolitan Magistrate, or a District Magistrate empowered in this behalf by the Government has, by order in writing, consented to the initiation of the proceedings :

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary.

196B. Preliminary inquiry in certain cases.— In the case of any offence in respect of which the provisions of section 196 or section 196A apply, the Chief Metropolitan Magistrate or a District Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in section 155, sub-section (3).

197. Prosecution of Judges and public servants.— (1) When any person who is a Judge within the meaning of section 19 of the Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Government.

Power of Government as to prosecution.— (2) The Government may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

198. Prosecution for breach of contract, defamation and offences against marriage.— No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence :

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf:

Provided further that where the husband aggrieved by an offence under section 494 of the said Code is serving in any of the armed forces of Bangladesh under conditions which are certified by the Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other persons authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.

199. Prosecution for adultery or enticing a married woman.— No Court shall take cognizance of an offence under section 497 or section 498 of the Penal Code , except upon a complaint made by the husband of the woman, or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed ;

Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf:

Provided further that where such husband is serving in any of the armed forces of Bangladesh under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, and where for any reason no complaint has been made by a person having care of the woman as aforesaid, some other person authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.

199A. Objection by lawful guardian to complaint by person other than aggrieved person.— When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.

199B. Form of authorisation under second proviso to section 198 or 199.— (1) The authorisation of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 of the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by the Officer referred to in the said provisos, and shall be accompanied by a certificate signed by that officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(2) Any document purporting to be such an authorisation and complying with the provisions of sub-section (1), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.

CHAPTER XVI

OF COMPLAINTS TO MAGISTRATES

200. Examination of complainant.— A Magistrate taking cognizance of an offence on complaint shall at once examine [2][upon oath the complaint and as such of the witness present, if any, as he may consider necessary,] and the substance of the examination shall be reduced to writing and shall be signed by the complainant or witness so examined , and also by the Magistrate :

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2. *By Ordn. XXIV of 1982 w. e. f. 21 - 8. - 82.*

Provided as follows :-

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require such examination before transferring the case under section 192;

(aa) when the complaint is made in writing nothing herein contained shall be deemed to require such examination in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties;

(b) Omitted by A.O. 1949

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined he complainant and witness if any, the Magistrate to whom it is so transferred shall not be bound to re-examine them.

Note

Section 200 has been amended by substituting "upon oath the complainant and such of the witnesses present, if any, as he may consider necessary" for the words and commas "the complainant and the witnesses present, 'if any' upon oath"—this change has relaxed the compulsion of examining all the cited witnesses in the complaint petition and now the Magistrate scrutinising the complaint petition may examine such number of witnesses as he may consider necessary.

The word "if any" makes it clear that the Magistrate shall examine witnesses if they are present and that he will not commit any illegality if he summons the accused persons only after examining the complainant in the absence of any other witness (84 DLR 237).

Examination of the complainant on oath when taking cognizance of an offence u/s 200 is mandatory. Failure to do so renders the proceeding liable to be quashed (37 DLR 227).

Other rulings: 37 DLR (SC) 335, 28 DLR (SC) 626.

201. Procedure by Magistrate not competent to take cognizance of the case.— (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

202. Postponement for issue of process.— (1) Any Magistrate , on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint :

Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the provisions of section 200 have been complied with:

[2][Provided further that where it appears to the Magistrate that the offence complained of is triable exclusively by a Court of Session, the Magistrate may postpone the issue of process for compelling the attendance of the person complained against and may make or cause to be made an inquiry or investigation as mentioned in this sub-section for the purpose of ascertaining the truth or falsehood of the complaint.]

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police station, except that he shall not have power to arrest without warrant.

(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath :

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

[2][(2B) Where the police submits the final report, the Magistrate shall be competent to accept such report and discharge the accused].

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2. By Ordn. XXIV of 1982 : w. e. f. 21 - 6 - 82

Note

Section 202 has been amended by adding Second proviso to Sub-Section (1) and also by adding Sub-Section (2B).

By adding this second proviso an extra precaution has been taken by directing the Magistrates to hold inquiry before process is issued against the accused persons with repsect to offences triable exclusively by the court of Sessions. The purpose is to check liberal acceptance of complaint petitions and thereby to nip in the bud the initiaion of false cases and also to minimise accumulation of great number of cases in the Court of Sessions. The same intention of minimising accumulation of cases apears to have been expressed in Sub-Section (2B) which provides for acceptance of the Final Report by the Magistrates as would be submitted by the Investigating Police Officer. However, it would be wrong to pay no heed to the Naraji petition or to give a total go bye to the scruting of the papers submitted by the police and to take a decision independent of the police report where it is called for.

35 DLR 140- Abdus Salam Master Vs. The State:- The Second proviso to section 202 (1) Cr. P.C., inserted by the Ordinance No. XXVI of 1982 provides by way of clarification, that in complaint cases which appear to be triable by the Court of Sessions if the Magistrate decides to postpone the issue of process, he may make or cause to be made an enquiry or investigation to ascertain the truth or falsity of the complaint. The proviso to Section 202 (2A) provides that if it appears to the Magistrate that the offence complained of is traiable exclusively by the Court of Sessions, he shall call upon the complainant to produce all his witnesses and examine them on oath and section 202 (2B) provides that the Magistrate shall be competent to accept the final report submitted by the police and discharge the accused in cases triable by the Magistrate or exclusively by the Court of Sessions.

36 DLR(AD) 58-Abdus Salam Master Vs. The State : Magistrate taking cognizance of the case on the report made u/s 202 is not competent to go into the question whether the accused has been implicated out of enmity-this shall be a matter of the court trying the accused.

35 DLR 176- Md. Showakat Rabbani Vs. Md. Showakat Osmani: In enquiry u/s 202 a Magistrate has no jurisdiction to ask a person complained against to take part in any manner in the enquiry and cannot be called upon to submit any explanation. There would be wholly unwarranted.

36 DLR (AD) 58 -Abdus Salam Vs. State : Procedure followed generally by the Magistrate, when police submits final report, is to direct further investigation by the police.—When naraji petition is filed against police final report, the Magistrate may take cognizance after examination of the complainant or may follow the procedure u/s 202.

5 BLD269=37 DLR (Com) 355-Nurual Huq Bahadur Vs. Bibi Sakina and another: — Examination of complainant on oath—No cognizance can be taken on the result of a judicical inquiry when the complainant was not examined on oath before the case was sent for judicial inquiry.

203. Dismissal of complaint.— The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under section 202; there is in his judgment no sufficient ground for proceeding. In such cases he shall briefly record his reasons for so doing.

CHAPTER XVII

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATE

204. Issue of process.— (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

(1A) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(1B) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

205. Magistrate may dispense with personal attendance of accused.— (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

205A
205B Omitted by Ordn, XXIV of 1982, w.e.f. 21.8.82.

Note

These sections have been amended dispensing with the requirement of furnishing copies of the statement and documents of the case to the accused free of cost.

205C. Transfer of case to Court of Sessions when offence is triable exclusively by it.— When in a case instituted on a police report or otherwise, the accuse appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall —

(a) send the case to the Court of Sessions;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the transfer of the case to the Court of Sessions.

Note

35 DLR 140 — Abdus Salam Master and another Vs. The State — When under section 205B/C the Cr. P.C. the Magistrate in a case instituted on a police report or otherwise sends a case to the Court of Sessions, he is required to send to that Court the documents, articles, if any, the record of the case which includes the F.I.R. or the complaint, the statements of the witnesses recorded by the police or the Magistrate and other papers (the Police report, statements recorded u/s 164 Cr. P.C. dying declaration, inquest report, postmortem report, doctor's report regarding injuries, seizure lists, etc.) connected with that case. In the cases triable exclusively by the Court of Sessions coming within the ambit

of clause (b) of section 190 Cr. P.C., the Magistrate, after the amendment omitting enquiry under Chaptger XVIII Cr. P.C., is required under the law to send the case to the Court of Sessions for disposal in accordance with law.(Other ruling 35 DLR 103).

It is very important to note here that under clause (d) of the Section Magistrates are required to notify the Public Prosecutor about the transfer of the case to the Court of Sessions. Magistrates very often ignore this provision; but it is to be complied with.

[3][**205CC. Transfer of case to District Magistrate, etc.**— When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the [4][Chief Metropolitan Magistrate], District Magistrate or the Additional District Magistrates, he shall —

(a) send the case to the [4][Chief Metropolitan Magistrate] or, as the case may be, District Magistrate ;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) Send to the [4][Chief Metropolitan Magistrate or, as the case may be, District Magistrate] the record of the case and the documents and articles, if any, which are to be produced in evidence.

(2) The District Magistrate may direct that any case received by him under sub-section (1) or any class of such cases shall be heard by any Additional District Magistrate subordinate to him.]

Note

By the recent amendments many offences of the penal code have been made exclusively triable by the chief Metropolitan Magistrates, ihe District Magistrates and the Additional District Magistrates. The present section is the consequence of such vesting of powers which has laid down the things to be performed by the Magistrates in sending the cases to the courts of chief Metropolitan Magistrates or District Magistrates.

The District Magistrates in their turn may transfer such cases to the Additional District Magistrates for trial.

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3. By Ordn. LX of 1982 ; w. e. f. 30 - 12 - 82

4. By Ordn. IV of 1983 ; w. e. f. 25 - 1 - 83

It is the general principle that in cases triable by the higher courts Magistrates shall be reluctant to enlarge the accuseds on bail.But, however, bail may be granted in exceptional circumstances and on assigning cogent reasons. Under such circumstances accuseds are to be directed to appear before the court where the case is transferred within such a period as the Magistrate thinks reasonable.

It is also important to note here that the accuseds on submission to the jurisdiction of the transferee court shall have to obtain bail from that court even if they are on bail granted by the Magistrates. It may also be mentioned here that when the Sessions Judge or the District Magistrate admits an accused to bail the same is honoured by the courts to which the case is transferred for trial.

(See note to section 205C for being apprised of the requirements about sending cases to the higher courts for trial).

35 DLR 425—Abdus Salik alias Sarkumullah & others Vs. the state and other: If the Magistrate was satisfied form the materials on record that a prima facie charge u/s 326 P.C. was made out against the accused persons during investigation, he ought to have taken steps under section 205C of the code of Criminal procedure, as, at the relevant time such offence was triable by the court of sessions which has now been made triable by the District Magistrate or Additional District Magistrate u/s 205CC, Cr. P.C.

205D. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.—(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

Chaper XXVIII (Containing sections 206 to 220) was Omitted by Ordn. XLIX of 1978.

CHAPTER XIX
OF THE CHARGE

Form of Charges

221. Charge to state offence.— (1) Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.— (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.— (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

What implied in charge.— (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge.— (6) The charge shall be written either in English or in the language of the Court.

Previous Conviction when to be set out.— (7) If the accused having been previously convicted of any offence is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it at any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not

fall within any of the five exceptions to section 300, or that, if it did fall within exception 1, one or other of the three provisos to that exception apply to it.

(b) A is charged, under section 326 of the Penal Code with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Penal Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property mark, without reference to the definitions of those crimes contained in the Penal Code: but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged, under section 184 of the Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

222. Particulars as to time, place and person.— (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 :

Provided that the time included between the first and last of such dates shall not exceed one year.

223. When manner of committing offence must be stated.— When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant,in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

224. Words in charge taken in sense of law under which offence is punishable.— In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

225. Effect of errors.— No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations

(a) A is charged under section 242 of the Penal Code , with "having been in possession of counterfeit coin, having known at the time when he became passed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall,not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haider Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haider Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haider Baksh. The court may infer from this that A was misled, and that the error was material.

226. Omitted by ordn. XLIX of 1978.

227. Court may alter charge.— (1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

228. When trial may proceed immediately after alteration.— If the charge framed or alteration or addition made under section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

229. When new trial may be directed or trial suspended.— If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

230. Stay of proceedings if prosecution of offence in altered charge require previous sanction.— If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

231. Re-call of witnesses when charge altered.— Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to re-call or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined and also to call any further witness whom the Court may think to be material.

232. Effect of material error.— (1) If any Appellate Court, or the High Court Division in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

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

Illustration

A is convicted of an offence, under section 196 of the Penal Code , upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of Charges

233. Separate charges for distinct offences.— For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234,235,236 and 239.

Illustration

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

234. Three offences of same kind within year may be charged together.— (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not , he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Penal Code or of any special law :

Provided that, for the purpose of this section, an offence punishable under section 379 of the Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

235. Trial for more than one offence.— (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) **Offence falling within two definitions.**— If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(3) **Act constituting one offence, but constituting when combined a different offence.**— If several acts, of which one or more than one would by itself or themselves constitute an offence,

constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by anyone, or more, of such acts.

(4) Nothing contained in this section shall affect the Penal Code, section 71.

Illustrations

to sub-section (1) -

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Penal Code.

(b) A commits house breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Penal Code.

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Penal Code.

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceedings; and also falsely accused B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Penal Code.

(f) A with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Penal Code.

(g) A, with six others, commits the offences of rioting, grievous hurt and assulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Penal Code.

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Penal Code.

The separate charges referred to in Illustrations (a) to (h) respectively may be tried at the same time.

to sub-section (2) -

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Penal Code.

(j) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Penal Code.

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Penal Code.

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Penal Code. A may be separately charged with, and convicted of, offences under section 471 (read with 466) and 196 of the same Code.

to sub-section (3) -

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Penal Code.

236. Where it is doubtful what offence has been committed.— If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such

charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A sates on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

237. When a person is charged with one offence, he can be convicted of another.— (1) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

238. When offence proved included in offence charged.— (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(2A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(3) Nothing in this section shall be deemed to authorise a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations

(a) A is charged, under section 407 of the Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b) A is charged, under section 325 of the Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

239. What persons may be charged jointly.— The following persons may be charged and tried together, namely :-

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abatement, of or of an attempt to commit such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abatement of or attempting to commit any such last named offence;

(f) persons accused of offences under sections 411 and 414 of the Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and

(g) persons accused of any offence under Chapter XII of the Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence;

and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

240. Withdrawal of remaining charges on conviction on one of several charges.— When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

CHAPTER XX
OF THE TRIAL OF [2][CASES] BY MAGISTRATE

241. Procedure in [2][cases].— The following procedure shall be observed by Magistrate in the trial of [2][cases].

[3][**241A. When accused shall be discharged.**— When the accused appears or is brought before the Magistrate, and if the Magistrate, upon consideration of the record of the case and the documents submitted therewith and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, considers the charge to be groundless, he shall discharge the accused and record his reasons for so doing.]

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2. *By Ordn. XXII of 1982, w. e. f. 21-8-82*

3. *By Ordn LX of 1982, w. e. f. 30-12-82*

Note

This section is a new insertion and it empowers a Magistrate to discharge an accused if he considers the charge to be groundless. In so doing the Magistrate shall adhere to the following points:-

(i) He shall scrutinise the materials on record minutely;

(ii) He may examine the accused (such examination may be made by putting questions orally); and

(iii) He shall hear the advocates of both sides.

An order of discharge must contain the reasons for such discharge.

An order of discharge is subject to revision by the High Court Division or the Court of Sessions.

38 DLR (Ctg) 4 — Haji Azizur Rahman and others Vs. Syedul Hoque Choudhury : Expression "record his reasons for so doing" lays obligation on the Magistrate as to how he shall proceed to deal with the case before passing an order of discharge.

Section 241A Criminal Procedure Code does not authorise a Magistrate to pass arbitrary order of discharge. The Magistrate has to comply with certain requirements. He must assign cogent reason and should come to a finding that the charge is groundless and in doing so, in a complaint case, such as the present one, he should consider the petition of complaint, the documents submitted, statements of witnesses recorded during judicial enquiry, if any, report of the inquiring officer, if any, medical certificate if produced, make such examination, if any, of the accused, as the Magistrate thinks necessary and also hear the parties.

The learned Magistrate did not come to any finding that charge is groundless which expression in the said Section 241 A Cr. P.C. apparently means that he has to give reasons and find that there is no prima facie case warranting framing of the charge or charges. He has arbitrarily stated exercising his power under section 241A Cr. P.C. that the offences have not been proved which finding he has no jurisdiction to give without giving the prosecution a chance to adduce evidcence because there is a world of difference between making out a prima facie case and proving a case beyond reasonable doubt.

37 DLR III—Nurul Islam: Vs. The state : An order of discharge, which is passed on the merits and which is not plainly or substantially an order passed in default, although it does not in law constitute a legal bar will practically have the same effect as an order of acquittal.

Magistrate passed an order of discharge of a case on account of the absence of the parties and without going into the merits of the case.

Such an order is not a final order exhausting the power of the Magistrate and making him functus officio.

The term "further enquiry" in its wider meaning includes reconsideration of the evidence already on record as well, and in some cases it means a new enquiry altogether by a different Magistrate.

37.DLR 107— Md. Taheruddin Vs. Abul Kashem : If. before framing the charge the Sessions court considers that there is no sufficient ground for proceeding against the accused, then it shall discharge the accused and record the reason for so doing u/s 265C Cr. P.C. A Magistrate has similar power u/s 241A Cr. P.C.

43 DLR (AD) 63 .— Nannu Gazi vs. Awlad Hossain :

Magistrate cannot discharge accused person on the plea of alibi that they were at different places at the tires of commission of the offences. Mere. Submission of some paper Supporting alibi is neither sufficient nor admissible. as. the stage of adducing defence evidence did not arrive so. Magistrate's order of discharge was not sustainable as it was based on gross misconception of law (other rulings : 45 DLR 533 and 45 DLR 606).

45DLR 722 . — Sirajul Isalm vs. Billal Hossain and others : The trial court has wide power to frame charges and this cannot be interfered with by the Revisions Court by way of geeing direction for attiring a charge or framing a charge.

[2][242. Charge to be framed.— [If. after such consideration and hearing as aforesaid. the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence. the Magistrate shall frame a formal charge relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence in he is charged.]

Note

If on consideration of the materials on record the Magistrate considers the case to bear merit he shall frame charge.

Trial, in fact, commences when the charge is framed. [illegible] court starts when the Magistrate takes cognizance of offence on police report or on complaint. (36 DLR (AD) 14+38 DLR 166 + 38 DLR 177.)

A case becomes pending for trial when the Magistrate takes cognizance of an offence on the police report or on the complaint.

Trial of a case commences on the framing of charge. Before framing of charge trial cannot be said to have commenced, because, on the date of framing of charge accused may be discharged.

Trial period of a case that passes with the Magistrate before cognizance is taken may be said to be the "initial stage" of the case. (It has been instructed by issuing a Memorandum being No. CD/CJ/5(21)80/2 dateed 2.11.82 of the CMLA's Secretariat (Cabinet Division) that till receipt of the charge sheet in G.R. cases or the issuance of processes in C.R. Cases, the cases must not be shown to be pending cases).

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2. By Ordn. XXII of 1982: w.e.f. 21.8.82

3. By Ordn. LX of 1982 : w. e. f. 30. 12. 82.

243. Conviction on admission of truth of accusation.— If the accused admits that he has committed the offence [2][with which he is charged] , his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

Note

The words 'with which he is charged' have been substituted for the words "of which he is accused".

45 DLR 533— HM Ershad vs. State : Consideration of the Statements made under section 161 Cr. P. C. while framing of charge or otherwise is a necessary part of the Court's duty. (other ruling : 35 DLR 213, 40 DLR 310).

244. Procedure when no such admission is made.— (1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence :

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

245. Acquittal.— (1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thins fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

246. Omitted by Ordn. No. XXIV of 1982

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2. By Ordn. XXIV of 1982; w.e.f. 21.8.82

3. By Ordn. LX of 1982; w.e.f. 30.12.82.

247. Non-appearance of complainant.— If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything herein before contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day :

Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.

Note

39 DLR 103, Golam Nasir vs Abdul Aziz and of his : In order to make an order under section 247 Cr. P. C. three conditions are to be satisfied. There should be service of summons, secondly, the date fixed should be the date for appearance and thirdly, on that date the complainat is to be found absent. Unless these conditions are present the Magistrate is not authourised to pass an order of acquittal.

In this case those condition are absent and the order of the learned Magistrate betrays want of application of his judicial mind. He passed the impugned order on the ground that the complainant was absent on calls but he himself recorded that the complainant was present on 7 - 10 - 82 and secondly, the date was fixed for execution report of warrant of arrest and not for appearance but without noticing the purpose for which the said date was fixed the Magistrate acquitted the accused person. The order was not only arbitrary but also manifestly illeal.

248. Withdrawal of complaint.— If a complainant, at any time before a final order is passed in any case under this Chapter, satisfied the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

249. Power to stop proceedings when no complainant.— In any case instituted otherwise than upon complaint, a Metropolitan Magistrate a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate, may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

[2][*Frivolous Accusations in Cases tried by Magistrate*]

2. By Ordn. XXIV of 1982 : w. e. f. 21 - 8 - 82

Note

The word "cases" has been substituted for the words "Summons and warrant cases". This became necessary in view of the abolition of Summons procedure and warrant procedure in the trial of cases by the Magistrates.

250. False, frivolous or vexatious accusations.— (1) If in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate or any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one thousand taka or, if the Magistrate is a Magistrate of the third class, not exceeding five hundred taka, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(2A) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2B) When any person is imprisoned under sub-section (2A) the provisions of sections 68 and 69 of the Penal Code shall, so far as may be, apply.

(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2)] by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding 3[one hundred taka may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

[2][(5) Notwithstanding anything contained in this section, the Magistrate may, in addition to the order directing payment of the compensation under sub-section (2), further order that the person ordered to pay such compensation shall also suffer imprisonment for a period not exceeding six months or pay a fine not exceeding three thousand taka.]

Note

Section 250 has been amended by adding Sub-Section(5). Originally a complainant or an informant who is found to have brought false and either frivolous or vexatious accusation could be punished by ordering him to pay compensation for an amount of one thousand taka in case of a Magistrate of the first or second class and five hundred taka in case of a Magistrate of the Third class and in default of such payment to suffer simple imprisonment for a period not exceeding thirty days.

Now, in view of Sub-Section (5) in addition to the payment of such compensation the said complainant or informant may also be sentenced to imprisonment for a period upto six months or to pay an amount of fine upto three thousand taka.

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2. By Ordr. XXII of 1982 w. e. f. 21-8-82

This drastic measure has been embodied to check institution of false cases.

14 DLR 188 SC-Golam Kader Vs. Fazal Din : Complaint lodged u/s 107 of the Code even if false and frivolous does not justify initiation of proceeding under Section 250.

CHAPTER XXI

Trial of Warrant Cases by Magistrate

OMITTED

Vide Ordinance No. XXIV of 1982, w.e.f.21.8.82.

Note

This omission has brought in a significant change in the procedure regarding trial of cases by Magistrates. Now, the Magistrates shall follow the only procedure as laid down in Chapter XX in trying all cases. This has been done to simplify the procedure of trial.

CHAPTER XXII

OF SUMMARY TRIALS

260. Power to try summarily.— (1) Notwithstanding anything contained in this Code,-

(a) the Metropolitan Magistrate or the District Magistrate,

(b) any Magistrate of the first class specially empowered in this behalf by the Government , and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class and especially empowered in this behalf by the Government.

[2][shall try in a summary way all or any of the following offences :-

(a) offences not punishable with death, transportation or imprisonment for a term exceeding two years:]

(b) offences relating to weights and measures under sections 264,265 and 266 of the [2][Penal Code;]

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2. *By Ordn. XXIV of 1982 , w. e. f. 21 - 8 - 82* '.

(c) hurt, under section 323 of the same Code;

(d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed [23][ten thousand taka;]

(e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed [3][ten thousand taka:]

(f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed [3][ten thousand taka;]

(g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed [3][ten thousand taka;]

(h) mischief under sections 426 and 427 of the same Code;

(i) criminal trespass, under section 447, and house trespass, under section 488, and offences under sections 451, 453,454 , 456 and 457 of the same Code;

(j) insult with intent to provoke a breach of the peace under section 504, and criminal intimidation, under section 506, and offences under sections 509 and 510 of the same Code;

[15][(jj) offence of bribery and personation at an election under section 171E of the same Code:]

(k) abatement of any of the foregoing offences;

(l) an attempt to commit any of the foregoing offences, when such attempt is an offence;

(m) offences under section 20 of the Cattle-trespass Act, 1871 :

Provided that no case in which a Magistrate exercises the special powers conferred by section [2][33A] shall be tried in a summary way.

[2](CHAPTER XXII)

[2]Omitted by Ordn. No. XXIV of 1982.

Note

Ordn. no. XXIV of 1982 has substituted "Shall" for the words and commas 'may, if he or they think fit" and "two years" for "one year" in sub-section(1), and "33A" for "34" in the proviso to the said sub-section. Further, this Ordinance has omitted sub-section (2).

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2. By Ordn. XXIV of 1982 ; w. e. f. 21 - 8 - 82

15. Inss. by Act III of 1992 ; w. e. f. 29 - 1 - 92

(2). Ordn. No. LX of 1982 has substituted the words "ten thousand taka" for the words "five hundred taka" in clauses (d), (e), (f) and (g) of the said sub-section.

Sub-section (2) of the Section has been omitted and thereby the provision of converting a summary trial into a regular trial has been abolished. By inserting the word "Shall" in place of "may" it has been made manddatory to try all such cases as enumerated in the Section from clauses (a) to (m) in a Summary way.

Sub-section (jj) have bun inserted by Act III of 1992; with effect from 29 . 1. 92 bringing in the offense of bribery and personation at an election within the ambit of summery Arial.

Time Limit : In view of the recent amend went vide Act 42 of 1992 a Summary trial is also to be concluded within 180 days. The provision is directory and not mandatory in nature since non-completion of the case within the stipulated period does not follow with any judicial consequences.

261. Power to invest Bench of Magistrates invested with less power.— The Government may confer on any Bench of Magistrate invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences :-

(a) offences against the Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, 447 and 504 ;

(b) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine;

(c) abatement of any of the foregoing offences;

(d) an attempt to commit any of the foregoing offences, when such attempt is an offence.

262. Procedure for summary trials.— (1) In trials under this Chapter, the procedure prescribed [2][in Chapter XX] shall be followed except as hereinafter mentioned.

Limit of imprisonment.— (2) No sentence of imprisonment for a term exceeding [2][two years] shall be passed in the case of any conviction under this Chapter.

Note

Section 262 has been amended providing for awarding a maximum sentence of two years imprisonment in place of three months in a summary trial.

In a summary trial procedure to be followed is as laid down in chapter XX.

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2. By Ordn XXIV of 1982 ; w. e. f. 21 - 8 - 82.

263. Record in cases where there is no appeal.— In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Government may direct the following particulars :-

(a) the serial number;

(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 (d), clause) (e), clause (f) or clause (g) 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, and, in the case of a conviction, a brief statement of the reasons therefor;

(i) the sentence or other final order; and

(j) the date on which the proceedings terminated.

264. Record in appealable cases.— (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or bench shall, before passing sentence, record judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

(2) Such judgment and memorandum of the substance of the evidence as required by section 355 shall be the only record in cases coming within this section.

265. Language of record and judgment.— (1) Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately sub-ordinate so directs, in such officer's mother tongue.

Bench may be authorised to employ clerk.— (2) The Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the

Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

39 DLR 319 Kamar Alirs Abdul Manof and of his : All processes to compel attendance of PWs when failed, order of acquittal u/s. 265 is correct.

In the instance case, summons were issued on 14 - 3- 84 and thereafter warrants were issued on 22 - 4 - 84 for compelling the attendance of the prosecution witness. in the circumstances, the observation made by the learned Additional Sessions Judge that sufficient opportunity was given to the prosecution and all processes were exhausted for compelling the attendance of the prosecution witnesses appear to be correct. After the failure of the prosecution to adduce any evidence, learned additional Sessions Judge was competent to pass the impugned order of acquittal under section 265H.

No useful purpose would be served in setting aside the impugned order of acquittal. We are further of the opinion that there has been no miscarriage of justice caused by the impugned order of acquittal.

CHAPTER XXIII
OF TRIALS BEFORE COURTS OF SESSIONS

Note

Chapter XXIII of the Code has been substituted by the Law Reforms Ordinance.1978 omitting as many as seventyone sections running from section 266 to 336 and by inserting twelve sections viz. 265A to 265L. The previous chapter had the headings "Of Trials Before High Courts and Courts of Sessions "and it contained detail provisions.regarding trials before the High court and the court of sessions and also trials with the aid of Jury and Assessors.

Again, a second proviso has been added to section 4 of the law Reforms Ordinance.1978 by Ordinance No. LX of 1982, with effect from 30-12-82 in the following terms:-

"Provided further that it shall not be necessary for a court of Sessions to held trial with the aid of assessors".

By this amendment trial of Sessions cases with the aid of ASSESSORS has categorically been declared to have been abolished. And this measure has relieved the courts of wasting time on some fruitless job of choosing, appointing and holding trials with the aid of assessors and it helps accelerate quick disposal of cases.

265A. Trial to be conducted by Public Prosecutor.— In every trial before a Court of Sessions, the prosecution shall be conducted by a Public Prosecutor.

265B. Opening case for prosecution.— When the accused appears or is brought before the Court in pursuance of section 205C, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

265C. Discharge.— If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf, the Court considers that there is no sufficient ground for proceeding against the accused, it shall discharge the accused and record the reasons for so doing.

265D. Framing charge.— (1) If, after such consideration and hearing as aforesaid, the Court is of opinion that there is ground for presuming that the accused has committed an offence, it shall frame in writing a charge against the accused.

(2) Where the Court frames a charge under sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

265E. Conviction on plea of guilty.— If the accused pleads guilty, the Court shall record the plea and may, in its discretion, convict him thereon.

265F. Date for prosecution evidence.— If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 265E, the Court shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

265G. Evidence of prosecution.— (1) On the date so fixed, the Court shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Court may, in its discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

265H. Acquittal.— If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Court considers that there is no evidence that the accused committed the offence, the Court shall record an order of acquittal.

265-I. Entering upon defence.— (1) Where the accused is not acquitted under section 265H, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Court shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Court shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

265J. Arguments.— When the examination of the witnesses (if any) for the defence is complete, the prosecution shall sum up his case and the accused or his pleader shall be entitled to reply :

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

265K. Judgment of acquittal or conviction.— (1) After hearing arguments and points of law (if any), the Court shall give a judgment in the case.

[5][(2)] Omitted by Ordn. No. XXXVII of 1983.

Note

Sub-section (2) of section 265K has been omitted and this omission has relieved the the courts from obtaining the opinion of the accused about the sentence while the accused is found guilty in a case.

37 DLR 156-State Vs. Mokbul Hossain : Accused's right to be heard before sentence of punishment is passed in a pending case not affected by deletion of section 265K(2).

After conviction on a charge u/s 302/34 where punishment inflicted is the minimum, i.e. imprisonment for life, right available to the accused u/s 265K(2) no longer relevant, because, sentence imposed is the minimum one under the law.

265L. Previous conviction.— In a case where a previous conviction is charged under the provisions of sub-section (7) of section 221, and the accused does not admit that he has been previously convicted as alleged in the charge, the Court may, after it has convicted the said accused under section 265F or section 265K, take evidence in respect of the alleged previous conviction, and shall record a finding thereon :

Provided that no such charge shall be read out by the Court nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 265E or section 265K.

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5. By Ordn. XXXVII of 1983, w. e. f. 8 - 8 - 83