PG. DIP. IN CRIMINOLOGY & POLICE ADMINISTRATION | **PAPER-3 CRIMINAL LAW**

Lesson No. :

SECTION-C

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Note : Students can download the syllabus from department's website www.dccpbi.com.

LESSON NO. 2.1 SECTION-C AUTHOR : DR. ARPINDER SINGH KHAIRA

PROCESS TO COMPEL THE APPEARANCE OF PERSON

An Overview

2.1.0 Introduction

A condition precedent to a trial is securing the attendance of the accused, witnesses or other necessary persons before the court and also the production of the documents necessary for the trail. Thus, appearance is required not only of the accused, but also of witnesses. Process is defined as any means used by court to compel appearance of a defendant before it or a compliance with its demand. There are different modes in the Code of Criminal Procedure, 1973 (hereinafter read as Cr.PC) to compel the appearance of a person. The law regarding in this respect is laid down in Chapter VI entitled 'Process to Compel Appearance' under sections 61 to 90 of the Cr.PC and there are six ways of process to compel a person to appear in court namely:

(1) Summons: Sections 61 to 69

(2) Warrant: Sections 70 to 81

(3) Warrant in lieu of summons: Sections 87 and 89

(4) Proclamation of an absconder: Section 82

(5) Attachment of Property: Sections 83 to 85

(6) Bond, with or without sureties: Section 88

2.1.1 Summons: Sections 61 to 69

Summons are issued for the purpose of appearance or for the production of document or thing in the court of law. It is a document issued from the office of a court of justice calling upon the person to whom it is directed to attend before a judge or officer of the court. Section 61 of Cr.PC requires that every summons issued by a court shall be in writing in duplicate signed and sealed by the Presiding Officer of such court. In this respect, sections 61to 69 of the Cr.PC runs as under:

- **Section 61: Form of summons**

"Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court."

- **Section 62:Summons how served**

"(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate."

- **Section 63: Service of summons on corporate bodies and societies**

"Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principle officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India,

in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Explanation : In this section, "corporation" means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860)."

- **Section 64: Service when persons summoned cannot be found**

"Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Explanation : A servant is not a member of the family within the meaning of this section."

- **Section 65: Procedure when service cannot be effected as before provided**

"If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper."

- **Section 66: Service on Government servant**

"(1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily sent it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and

shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service."

- **Section 67: Service of summons outside local limits**

"When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served."

- **Section 68: Proof of service in such cases and when serving officer not present**

"(1) When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons are returned to the Court."

- **Section 69: Service of summons on witness by post**

"(1) Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

(2) When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness

refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served."

Thus, summon in clear terms is the title of the court, the place at which and the day or time of the day when the attendance of the person summoned is required. The summons shall be served by a police officer or an officer of the court issuing it or other public servant. The summons has to be served personally on the person, summoned by delivering a duplicate copy of the summons, who signs receipt therefore on the back of the other duplicate.

2.1.2 Warrant of Arrest: Sections 70 to 81

The second method of securing attendance of a person is by means of a warrant of arrest. The warrant is an order addressed to a certain person directing him to arrest the accused and to produce him before the court. It is executed by a Magistrate on good and legal ground only. Section 70 of the Cr.PC gives the essentials of a warrant of arrest. It lays down that every warrant of arrest issued by a court shall be in writing, signed by the Presiding Officer of such court, and shall bear the seal of the court and in order to be valid a warrant must fulfil the following requisites:

(i) It must be in writing and signed by the Presiding Officer

(ii) It must bear the name and designation of the police officer or other person who is to execute it

(iii) It must give full particulars of the person to be arrested so as to identify him clearly

(iv) It must specify the offences charged

(v) It must be sealed.

Warrants are of two kinds: bailable and non-bailable. Section 71 deals with bailable warrant and lays down that a warrant may contain a direction of the court that if the person to be arrested executes a bond with sufficient sureties for his attendance before the court at a specified time, the serving officer shall

take such security and release him from custody. Such a bailable warrant shall also state the number of sureties, the amount of the bond and the time at which the arrested person is to attend the court. A warrant of arrest shall ordinarily be directed to one or more police officers, but the court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons and such person or persons shall execute the same.

The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, offender or person accused of a non-bailable offence, or a proclaimed offender evading arrest. The police officer or any other person executing a warrant has to notify the substance thereof to the person to be arrested, and if so required, to show him the warrant. The police officer or other person executing a warrant shall (subject to the provisions of section 71 to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person: provided that such delay shall not in any case exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court. A warrant of arrest may be executed at any place in India and every warrant shall remain in force until it is cancelled by the court which issued it or until it is executed. A warrant of arrest does not become invalid on the expiry of the date fixed for return of the warrant. The legal provisions in this context are contained in sections 70 to 80 of Cr.PC as under:

- **Section 70: Form of warrant of arrest and duration**

"(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed."

- **Section 71: Power to direct security to be taken**

"(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state-

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued, are be respectively bound;

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court."

- **Section 72: Warrants to whom directed**

"(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them."

- **Section 73: Warrant may be directed to any person**

"(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71."

- **Section 74: Warrant directed to police officer**

"A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed."

- **Section 75: Notification of substance of warrant**

"The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant."

- **Section 76: Person arrested to be brought before Court without delay**

"The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

- **Section 77: Where warrant may be executed**

"A warrant of arrest may be executed at any place in India."

- **Section 78: Warrant forwarded for execution outside jurisdiction**

"(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner herein before provided.

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person."

- **Section 79: Warrant directed to police officer for execution outside jurisdiction**

"(1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3)Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police

officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it."

- **Section 80: Procedure on arrest of person against whom warrant issued**

"When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometers of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner."

- **Section 81: Procedure by Magistrate before whom such person arrested is brought**

"(1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is already and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of

the information and the documents referred to in sub-section (2) of section 78, to release such person on bail."

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71."

Thus, an arrest warrant is a written order issued by a judge or other proper judicial officer, upon probable cause, directing the police to arrest a particular person. Where a person has been concerned in a non-cognizable offence he cannot (except in certain cases) be arrested without a warrant. Every warrant of arrest issued by a court should be in writing and must contain the signature of the Presiding Officer, name of the person who is to execute, name of the person to be arrested and seal of the court. Every warrant shall remain in force until it is cancelled by the court or until it is executed. Court may in its discretion make an endorsement on warrant for the release of the person after executing a bond with sufficient sureties. Every warrant issued by any Magistrate in India may be executed in any place in India or it may be forwarded for execution outside its jurisdiction to any Executive Magistrate or District superintendent of police or Commissioner of police within the local limits of whose jurisdiction it is to be executed.

2.1.3 Warrant in lieu of summons: Sections 87 and 89

A court may issue a warrant in lieu of or in addition to a summons for the appearance of any person in the following three cases:

(i) Where the court believes that the person summoned has absconded or will not obey the summons

(ii) Where although the summons is proved to have been served in time, the person summoned without reasonable cause fails to appear, and

(iii) On breach of a bond for appearance.

Thus under these circumstances, a Magistrate ought not to issue a warrant either in lieu of or in addition to summons in a summons case unless he has

previously recorded the reason for his so doing. The legal provisions are contained in sections 87 and 89 of Cr.PC. as under:

- **Section 87:Issue of warrant in lieu of, or in addition to, summons**

"A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest-

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure."

- **Section 89: Arrest on breach of bond for appearance**

"When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him."

2.1.4 Proclamation of an absconder: Section 82

The fourth processes of compelling the appearance of a person before a court are by a proclamation. If a court has reasons to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and time not less than thirty days from the date of publishing such proclamation. The court may also, if it thinks fit, direct a copy of the proclamation to be published in daily newspaper circulating in the place in which such person ordinarily resides. In this respect section 82 runs as under:

- **Section 82:Proclamation for person absconding**

"(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may public a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (I) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

It is worth noting that in the year of 2005 by the Code of Criminal Procedure (Amendment) 2005, in section 82 of the principal Act, after sub-section (3), the following sub-sections are inserted, namely:

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367,

382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1)."

2.1.5 References and Suggested Books

1. S.C. Sarkar, "The Law of Criminal Procedure", India Law House, New Delhi, 7th edn., Reprint 2001.
2. Universal Criminal Manual, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2004.
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LESSON NO. 2.2 SECTION-C AUTHOR : DR. ARPINDER SINGH KHAIRA

ATTACHMENT OF PROPERTY

An Overview

2.2.0 Introduction

A condition precedent to a trial is securing the attendance of the accused, witnesses or other necessary persons before the court and also the production of the documents necessary for the trail. Thus, appearance is required not only of the accused, but also of witnesses. Process is defined as any means used by court to compel appearance of a defendant before it or a compliance with its demand. There are different modes in the Code of Criminal Procedure, 1973 (hereinafter read as Cr.PC) to compel the appearance of a person. The law regarding in this respect is laid down in Chapter VI entitled 'Process to Compel Appearance' under sections 61 to 90 of the Cr.PC and there are six ways of process to compel a person to appear in court namely:

(1) Summons: Sections 61 to 69

(2) Warrant: Sections 70 to 81

(3) Warrant in lieu of summons: Sections 87 and 89

(4) Proclamation of an absconder: Section 82

(5) Attachment of Property: Sections 83 to 85

(6) Bond, with or without sureties: Section 88

2.2.1 Attachment of Property: Sections 83 to 86

After issuing of such proclamation if he fails to comply and has been avoiding his arrest the court may issue an order for the attachment of the properties of the person absconding. The purpose and the object are to compel the appearance of the person. The court issuing a proclamation may for reasons to be recorded in writing at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person. There may even be a simultaneous order of attachment along with the order of proclamation. If the court is satisfied that the person in relation to whom the proclamation is issued is about to dispose of the whole or any part of his property or is about to remove the whole or any part of his property from the local jurisdiction of the court. Since the object of attachment is to enforce the appearance of the absconder, the attachment usually accompanies the proclamation. The statutory provisions in this respect are contained in sections 83, 84, 85 and 86 of the Cr.PC and these provisions are explained as under:

- **Section 83: Attachment of property of person absconding**

"(1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise that the person in relation to whom the proclamation is to be issued,-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made-

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases-

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908(5 of 1908)."

Thus, section 83 of the Cr.PC provides different modes of attachment of property.

- **Section 84: Claims and objections to attachment**

"(1) If any claim is preferred to, or objection made to the attachment of, any property attached under section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(2) Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub-section (2) of section 83, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made.

(3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive."

Thus, section 84 makes the provisions for the objections to the attachment by third person.

- **Section 85: Release, sale and restoration of attached property**

"(1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under section 84 has been disposed of under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

(3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub-section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale, and the residue of the property, shall, after satisfying there from all costs incurred in consequence of attachment, be delivered to him."

Thus, section 85 expressed about the restoration of attached property.

- **Section 86: Appeal from order rejecting application for restoration of attached property**

"Any person referred to in sub-section (3) of section 85, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first-mentioned Court."

2.2.2 Bond of Appearance: Sections 88 to 89

The sixth method of securing attendance of a person in court is to require him to execute a bond, with or without sureties, for his appearance in court. When a person for whose appearance or arrest the Officer Presiding in any court is empowered to issue a summons or warrant is present in such court, he may require such person to execute a bond, with or without sureties for his appearance in such court. When the person so bound by any bond to appear before a court does not appear, the Presiding Officer may issue a warrant directing that such person be arrested and produced before him. The legal provisions in this respect are contained in sections 88 and 89 of the Cr.PC and these runs as under:

- **Section 88: Power to take bond for appearance**

"When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial."

- **Section 89: Arrest on breach of bond for appearance**

"When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him."

- **Section 90:Provisions of this Chapter generally applicable to summonses and warrants of arrest**

"The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code."

Hence, the procedure is laid down in the CrPC to compel the attendance of the persons including the accused and witnesses by issuing of summons, arrest warrant or in case of absconding, declaring such person as proclaimed offender (commonly known as PO) and attaching his properties etc.

2.2.3 References and Suggested Books

1. S.C. Sarkar, "The Law of Criminal Procedure", India Law House, New Delhi, 7th edn., Reprint 2001.
2. Universal Criminal Manual, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2004.
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LESSON NO. 2.3 SECTION-C AUTHOR : DR. ARPINDER SINGH KHAIRA

COMPLAINT CASES

An Overview

Important Note: This topic is also relevant for Section B, Lesson No 8, under the title of "Complaint".

2.3.0 Introduction

A Complaint is an allegation which prima facie discloses the commission of an offence with the necessary facts for the Magistrate to take action. In other words, the receipt of 'complaint' is one of the modes according to which a Magistrate can take cognizance of offence under section 190 of the Code of Criminal Procedure, 1973 (hereinafter read as Cr.PC). In this context, Chapter XIV, sections 190 to 199 of Cr.PC deals with "Conditions Requisite for initiation of Proceedings" and these sections describe the methods by which the criminal courts are entitled to take cognizance of offences. Similarly, Chapter XV, sections 200 to 203 deals with the "Complaints to Magistrate" and Chapter XVI, sections 204 to 210, are about "Commencement of Proceedings before Magistrates". In this backdrop, Chapter XIV of the Cr.PC under the caption 'Conditions requisite for initiation of proceedings' employs the word 'cognizance' and the very first section in the said Chapter *viz.,* section 190, outlines as to how cognizance of offences will be taken by a Magistrate of an offence. According to section 190 (1) of Cr.PC, any Magistrate of the first class any

Magistrate of the second class 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 police report of such facts;
c. Upon information received from any person other than a police officer or upon his own knowledge, that such an offence has been committed.

Thus, on receiving a complaint, the Magistrate may take cognizance of the offence and examine the complainant on oath under section 200 or instead of taking cognizance, he may order an investigation under section 156 (3). Then police will investigate and submit a report to Magistrate under section 173(2). Thus, sections 200, 201, 202, 203 and 204 of Cr.PC deals with examination of complainant, procedure by Magistrate not competent to take cognizance of the case, postponement of issue of process and dismissal of complaint etc. Hence, in this context, following are the relevant provisions under Cr.PC, namely:

- Complaint: Section 2 (d)
- Cognizance of offence by Magistrates: Sections 190 to 199
- Commencement of Proceeding before Magistrates: Sections 200 to 204

2.3.1 Complaint: Meaning and Definition: Section 2 (d)

According to section 2(d) of CrPC, "complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

Thus, according to this definition, to constitute a complaint there must be an allegation made with a view to the recipient taking action under the Code,

charging some person with a particular offence. A mere presentation of petition to a Magistrate to enable him to take administrative action is not a complaint within the terms of the definition. It must be presented to him with a view to his taking action under Cr.PC. A complaint need not necessarily be made by the person aggrieved but may be made by any person aware of the offence. Hence, the following are the main ingredients of a complaint:

- The allegation must be made to a Magistrate. A police officer is not a Magistrate and as such a petition or information sent to him is not a complaint.
- The allegation must be made with a view to the Magistrate's taking action under the Code. A mere statement to a Magistrate by way of information without any intention of asking him to take action is not a complaint.
- The allegation must be made orally or in writing. It need not set out all the facts on which the accused is to be charged, but must contain a statement of true facts relied on as constituting the offence in ordinary and concise language admitting of no ambiguity.
- The allegation must be that an offence has been committed. It is not necessary that a particular offence be stated: only the allegation of fact must constitute an offence. The mention of a wrong section does not vitiate the character of a complaint. The complaint need not specify any offender or even the section of the law which makes the act or omission punishable.
- A complaint need not necessarily be made by the person injured but may be made by any person aware of the offence. In case of the defiance of general law, any person, whether he has suffered any particular injury or not, has a right to complaint. The court will, therefore, take cognizance of the above complaint.

2.3.2 Cognizance of offence by Magistrates: Sections 190 to 199

The word 'cognizance', rooting from old French "conoisance", based on Latin "cognoscere" or the words 'taking cognizance' have not been deciphered and defined in the procedural law, the same derive definite connotation from plethora of precedents and gain perceptive explanation and incisive exegesis from judicial pronouncements. While plain and dictionary meaning thereof is 'taking note of', 'taking account of', 'to know about', 'to gain knowledge about', 'awareness about certain things' etc. In law, the common understanding of the term 'cognizance' is "taking judicial notice by a court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter 'judicially'". Thus, legal sense of taking judicial notice by a court of law or a Magistrate is altogether different from the view and idea a layman has for it; however, a broad and general comprehension is 'judicial notice by a court of law on a crime which, according to such court, has been committed against the complainant, to take further action if facts and circumstances so warrant. Regarding the procedure involved in taking cognizance, to start with, there must be application of judicial mind to the materials, oral and documentary as well as other information submitted and apprised of. The litmus test of taking cognizance, whether it be relating to an offence on a complaint, or on a police report, or upon information of a person other than a police officer, is making a thorough assessment of the allegations by coming into grip with the facts presented and bringing into focus the law on the subject and applying the facts to the law and thereafter arriving at a conclusion by a process of reasoning and evidencing that all relevant facts have been taken note of and properly analysed in the light of the law applicable.

Hence **"**Taking cognizance" of a case relating to an alleged offence is different from "cognizable case". A police officer can register an FIR only if a cognizable offence is made out and he cannot investigate into a non-cognizable offence

without seeking permission from the court. Both the terms seem to sound similar but they stand for a meaning and context different from each other. Though, the word 'cognizance' is not defined in the Code, but the term 'cognizable offence' has been defined in section 2 (c) of the Cr.PC. According to section 2 (c), "Cognizable offence means an offence for which, and 'cognizable case' means a case in which a police officer may, in accordance with the First schedule or under any other law for the time being in force, arrest without warrant. According to section 2(l), 'non-cognizable offence' means an offence for which and 'non cognizbale case' means a case in which a police officer has no authority to arrest without warrant. Therefore, one must be clear about the application of the Code with reference to "taking cognizance" and distinction between "cognizable" and "non-cognizable" offences. Once cognizance is taken, process may have to be issued against the person, who is alleged to have committed the offence and the procedure adumbrated must necessarily follow. For better analysis of the scope of cognizance and the consequences arising there from, it is worthwhile to highlight the scheme of relevant provisions in the Code and the case laws touching the same.

In this context, section 190 contains the provisions as to how cognizance of offences will be taken by a Magistrate of an offence. Section 191 empowers the Chief Judicial Magistrate for transfer of a case taken on file *suo-motu* by a Judicial Magistrate concerned since the Magistrate himself being a complainant, there may be scope for alleging prejudice or malice. By virtue of section 192, a Chief Judicial Magistrate, who takes cognizance of an offence, by passing administrative order, transfer the case concerned to the file of any other Magistrate subordinate to him for inquiry or trial. Section 193 prohibits cognizance of any offence by a court of Sessions stepping into the shoes of the court having original jurisdiction except in cases where power is conferred by the statute while section 194 empowers Sessions Courts for transfer of cases to the file of Additional and Assistant Sessions Judges. Section 195 deals with

prosecution for contempt of lawful authority of public servants for offences against public justice and for offences relating to documents given in evidence. Section 196 pertains to offences against the State and for criminal conspiracy to commit the offence and sections 197, 198, 198-A and 199 relates to prosecution of Judges and public servants, prosecution for offences against marriage, offences under section 498-A IPC and defamation respectively. The relevant legal provisions in these sections under Cr.PC are explained as under:

- **Section 190: Cognizance of offences by Magistrates**

"(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence –

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

(b) upon a police report of such facts;

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

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

- **Section 191: Transfer on application of the accused**

"When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf."

- **Section 192: Making over of cases to Magistrates**

"(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial."

- **Section 193: Cognizance of offences by Courts of Session**

"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 case has been committed to it by a Magistrate under this Code."

- **Section 194: Additional and Assistant Sessions Judges to try cases made over to them**

"As Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try."

- **Section 195: Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence**

"(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code,(45 of 1860) or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code,(45 of 1860) namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), 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 whose local 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;

(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."

- **Section 196: Prosecution for offences against the State and for criminal conspiracy to commit such offence**

"(1) No Court shall take cognizance of –

(a) any offence punishable under Chapter VI or under section 153A, section 153B, section 295A or section 505 of the Indian Penal Code, (45 of 1860) or

(b) a criminal conspiracy to commit such offence, or

(c)any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

(1A) No Court shall take cognizance of-

(a) any offence punishable under section 153B or sub- section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code, (45 of 1860) other than a criminal conspiracy to commit a cognizable offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction 2 under sub- section (1) or sub- section (1A) and the District Magistrate may, before according sanction under sub- section (1A) and the State Government or the District Magistrate may, before giving consent under sub- section (2), order a preliminary investigation by a police officer not being below rank of Inspector, in which case such police officer shall have the powers referred to in sub- section (3) of section 155."

- **197: Prosecution of Judges and public servants**

"(1) When any person who is or was a Judge or Magistrate or a public servant 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 (save as otherwise provided in the Lokpal and Lokayuktas Act, 2013)-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article section 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation : For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in Sub-Section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while

a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and 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."

- **Section 198: Prosecution for offences against marriage**

"(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that-

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

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union 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, some other person authorized by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under section 494 of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister.

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a person who has not been appointed or declared by a competent authority to be the guardian of the person of the minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

(4) The authorization referred to in clause (b) of the proviso to sub-section (1), 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 his Commanding Officer, 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.

(5) Any document purporting to be such an authorization and complying with the provisions of sub-section (4), 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.

(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code, (45 of 1860) where such offence consists of sexual intercourse by a man with his own wife, the wife being under eighteen years of age, if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence."

- **Section 199: Prosecution for defamation**

"(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

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

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his

public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction-

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

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LESSON NO. 2.4 SECTION-C AUTHOR : DR. ARPINDER SINGH KHAIRA

Commencement of Proceeding before Magistrates

An Overview

Important Note: This topic is also relevant for Section B, Lesson No 8, under the title of "Complaint".

2.4.0 Introduction

A Complaint is an allegation which prima facie discloses the commission of an offence with the necessary facts for the Magistrate to take action. In other words, the receipt of 'complaint' is one of the modes according to which a Magistrate can take cognizance of offence under section 190 of the Code of Criminal Procedure, 1973 (hereinafter read as Cr.PC). In this context, Chapter XIV, sections 190 to 199 of Cr.PC deals with "Conditions Requisite for initiation of Proceedings" and these sections describe the methods by which the criminal courts are entitled to take cognizance of offences. Similarly, Chapter XV, sections 200 to 203 deals with the "Complaints to Magistrate" and Chapter XVI, sections 204 to 210, are about "Commencement of Proceedings before Magistrates". In this backdrop, Chapter XIV of the Cr.PC under the caption 'Conditions requisite for initiation of proceedings' employs the word 'cognizance' and the very first section in the said Chapter *viz.,* section 190, outlines as to how cognizance of offences will be taken by a Magistrate of an offence. According to section 190 (1) of Cr.PC, any Magistrate of the first class any

Magistrate of the second class specially empowered in this behalf, may take cognizance of any offence:

d. Upon receiving a complaint of facts which constitute such offence;

e. Upon a police report of such facts;

f. Upon information received from any person other than a police officer or upon his own knowledge, that such an offence has been committed.

Thus, on receiving a complaint, the Magistrate may take cognizance of the offence and examine the complainant on oath under section 200 or instead of taking cognizance, he may order an investigation under section 156 (3). Then police will investigate and submit a report to Magistrate under section 173(2). Thus, sections 200, 201, 202, 203 and 204 of Cr.PC deals with examination of complainant, procedure by Magistrate not competent to take cognizance of the case, postponement of issue of process and dismissal of complaint etc. Hence, in this context, following are the relevant provisions under Cr.PC, namely:

- Complaint: Section 2 (d)
- Cognizance of offence by Magistrates: Sections 190 to 199
- Commencement of Proceeding before Magistrates: Sections 200 to 204

2.4.1 Commencement of Proceeding before Magistrates: Sections 200 to 204

When the complaint in writing is filed in the Court, the Magistrate after perusal of the complaint, registers it, and after registering it, the statement of complainant under section 200 of Cr.PC is recorded on the same day and the case is fixed for recording evidence of the witnesses under section 202 for any other day. After recording evidence under section 202 of the witness or witnesses, as the case may be, the case is fixed for arguments on summoning. Having heard the arguments on summoning, the case is fixed for order on summoning. If the Magistrate finds or satisfies that prima facie offence is made out against the accused and all essential ingredients of alleged offence are

available in complaint as per evidence under sections 200 and 202, then the Magistrate issues process under section 204 of the Cr.PC against the accused. On the other hand, if the Magistrate satisfied after perusal of evidence under sections 200 and 202 that no *prima facie* offence is made out and there is no sufficient ground for proceeding, he dismisses the complaint under section 203 of Cr.PC. But, as per provisions of Chapter XV of the Cr.PC, the procedure of the complaint is quite different from the above general practice in the Courts. Now, we take up the provisions of Chapter XV of the Cr.PC. The statutory provisions in this context under the Cr.PC run as under:

- **Section 200: Examination of complainant**

"A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complainant; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

- **Section 201: Procedure by Magistrate not competent to take cognizance of the case**

"If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, -

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court."

- **Section 202: Postponement of issue of process**

"(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall in a case where the accused is residing at a place beyond the area in which he exercise his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made, -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate 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.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

- **Section 203: Dismissal of complaint**

"If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

- **Section 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-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, 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 no jurisdiction himself) some other Magistrate having jurisdiction.

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

(3) 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.

(4) 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.

(5) Nothing in this section shall be deemed to affect the provisions of section 87."

Thus, these provisions lay down the procedure when a Magistrate can take actions on receiving the complaints.

2.4.2 References and Suggested Books

1. Andrew Ashworth, "Principle of Criminal Law", Clarendon Press, Oxford, 2nd edn., 1995.
2. Dr. K.I Vibhute, "P.S.A. Pillai's Criminal Law", Lexis Nexis, Butterworths Wadhwa, Nagpur,11th edn., 2012.
3. Ratanlal and Dhirajlal, "The Indian Penal Code", Wadhwa and Company Law Publishers, Nagpur, 27th edn., 1992 (reprint) 1995.
4. Dr. Sri Hari Singh Gaur, "The Indian Penal Code", Law Publishers (India) Pvt. Ltd., Allahabad, 11th edn. in 4 Volumes, 1998.
5. Universal Criminal Manual, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2004.
6. S.K. Mishra, "Criminal Law of India", Allahabad Law Agency, Faridabad, 3rd edn., 2011.
7. R.V. Kelkar, "Criminal Procedure" Eastern Book Company, Lucknow, 1st edn., 1977, Reprinted 2011.
8. Durga Das Basu, "Criminal Procedure Code, 1973" LexisNexis Publication, Haryana, 5th edn., (Vol.2) 2014.
9. Sohoni's, "The Code of Criminal Procedure, 1973", The Law Book Company (P) Ltd., Allahabad, 19th edn., 1996.
10. S.C. Sarkar, "The Law of Criminal Procedure", India Law House, New Delhi, 7th edn., Reprint 2001.

LESSON NO. 2.5 SECTION-D AUTHOR : DR. ARPINDER SINGH KHAIRA

REPORTS OF CERTAIN GOVERNMENT SCIENTIFIC EXPERTS

An Overview

Important Note: This topic is also relevant for Section A, Lesson No 2, under the title of "Criminal Procedure Code, Section 293".

2.5.0 Introduction

Section 293 of the Code of Criminal Procedure, 1973 (hereinafter read as Cr.PC) deals with admissibility of report made by certain Government Scientific Experts as evidence. The Court may if it thinks fit, may also summon and examine any such expert about this report. Usually the opinion of expert becomes evidence, when he is examined in the court. There are provisions under Indian laws where the report of the expert can be accepted as piece of evidence without his examination in the court. In such circumstances the opinion becomes documentary evidence. Section 293 of Cr.PC gives a relaxation to the scientific experts to give their opinion, without presenting themselves in the Court, under certain circumstances.

2.5.1 Reports of Certain Government Scientific Experts: Section 293

Legal provisions concerning the reports of certain Government Scientific Experts are contained in section 293 of Cr.PC which runs as under:

- **Section 293: Reports of certain Government scientific experts**

"(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director, [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.

(g) any other Government Scientific Expert specified by notification by the Central Government for this purpose."

Thus, the prime object of section 293 of Cr.PC is to ensure that the scientific experts mentioned in the section are not summoned for oral evidence at the instance of a party as a matter of routine. The Court has the discretion to summon such witness if it deems it expedient to do so in the interest of justice. The prosecution is not required to examine a scientific expert or a Chemical

Examiner with regard to the safe custody of sample. The admissibility of the Chemical Examiner's report cannot be challenged on the ground that it does not contain the details of test or experiments upon which his opinion in the report is based. Generally, the report submitted by Chemical Analyst or Examiner is accepted in evidence even without examining the expert. But where the reports of the Chemical Analyser and the serologist which are produced by the prosecution are conflicting as to their contents, mere production of such reports does not carry any evidentiary value and hence they cannot be used against the accused.

Similarly, the reason for treating the report of the Director of Finger Print Bureau as evidence without examining the persons giving the report is that the science of finger prints has reached a stage of development when the results derived there from cannot be doubted. But where there is any doubt about its exactness, it can always be ascertained by calling the person making the report to appear before the Court.

Hence, section 293 makes provisions for accepting in evidence reports made by certain Government Scientific experts and this section provide for reading in evidence certain documents purported to be report under the hand of a Government Scientific expert as enumerated in Sub-Section (4) which include chemical examiner or Assistant Chemical Examiner to Government. This section is intended to save time and avoid needless examination of experts unless the Court finds it necessary to examine them or when the accused registered for examination of such expert.

Under sections 293 makes the reports of scientific experts admissible in any enquiry or trial. As per rule of evidence, every oral evidence must be given by the witness in the court only. But section 293 makes the report of the expert admissible in his absence in those cases, where he is unable to attend the court personally. In those cases where the Court considers the presence of scientific

expert necessary for explaining the tests or grounds on which such opinion has been given, then court can order the attendance of the expert in the Court.

Likewise, section 293 gives a privilege to certain specific scientific experts, as mentioned in clause (4) of the section, to give the opinion, by sending the report through his subordinate officer working under him. But the experts, who are not included in the list given under clause (4), their opinion cannot be admitted, unless they are present in the court. When the report of Ballistic Expert is not signed by the Director or Deputy Director of the State forensic science laboratory, the said report cannot be read in evidence without the examination of the Ballistic Expert. The report given by Chemical Examiner of Government opium and Alboid Factory is not admissible in evidence under section 293, because he is not one of the experts mentioned in section 293 of this Code. Similarly, according to section 293 (3) the expert who is summoned under sub-section (2) should attend personally the court in compliance with the summons and he cannot depute some other officer to attend the same, but where there is no such express direction to attend personally, then the expert who has been summoned may, instead of appearing personally, depute some other responsible officer who may attend in response to the summons, though the latter was not the author of the report itself. In the case of **Mohari v. Corporation of Calcutta (AIR 1953 Cal 561),** the court held that the report of no other Chemical Analyst, Private or Public, is entitled to this privileges without specific statutory provision.

So far admissibility of such report is concerned, the Supreme Court of India in the case of **Bhupinder v. State of Punjab (AIR 1988 SC 1011)**, held that the report of expert may be admitted as evidence without formal proof, but section 293 does not say what evidentiary value is to be given to the report and there is no hard and fast rule can be laid down in this behalf in the Code.

2.5.2 References and Suggested Books

1. Andrew Ashworth, "Principle of Criminal Law", Clarendon Press, Oxford, 2nd edn., 1995.
2. R.V. Kelkar, "Criminal Procedure" Eastern Book Company, Lucknow, 1st edn., 1977, Reprinted 2011.
3. Durga Das Basu, "Criminal Procedure Code, 1973" LexisNexis Publication, Haryana, 5th edn., (Vol.2) 2014.
4. Sohoni's, "The Code of Criminal Procedure, 1973", The Law Book Company (P) Ltd., Allahabad, 19th edn., 1996.
5. Prof. S.N. Misra, "The Code of Criminal Procedure", Central Law Publication, Allahbad, 11th edn., 2004.
6. S.C. Sarkar, "The Law of Criminal Procedure", India Law House, New Delhi, 7th edn., Reprint 2001.
7. M.P Tandon, "The Code of Criminal Procedure" Allahabad Law Agency, Faridabad, Haryana, 12th edn., 2001.

LESSON NO. 2.6 SECTION-D AUTHOR : DR. ARPINDER SINGH KHAIRA

CLASSIFICATION OF CRIMINAL COURTS

An Overview

2.6.0 Introduction

The Criminal justice system refers to the structure, functions, and decision processes of agencies that deal with the crime prevention, investigation, prosecution, punishment, correction etc. Therefore, a well defined criminal law is the foundation on which the whole structure of criminal justice system stands. It is the responsibility of the legislators to make the foundation strong by making criminal laws sound in all respects. The law of criminal procedure is intended to provide a mechanism to protect the society from criminals and law breakers. So, for the protection of the rights of the people, there is special type of mechanisms *viz.,* police, public prosecutors, defence councils, prison authorities, courts etc., in the Code of Criminal Procedure, 1973 (hereinafter read as Cr.PC). These mechanisms exercising their powers and perform duties

for the betterment of society. In this context, the Cr.PC contained several provisions for the above said machinery in Chapter II entitled 'Constitution of Criminal Courts and Offices' from sections 6 to 25A and Chapter III entitled 'Power of Courts' from sections 26 to 35. In other words, the following provisions of the Cr.PC deals with this concept:

- Classification of Criminal Courts: Sections 6 to 23
- Public Prosecutors: Sections 24 to 25A
- Power of Criminal Courts: Sections 26 to 35

2.6.1 Classification of Criminal Courts: Sections 6 to 23

Section 6 of Cr.PC provide following classes of criminal courts and sections 7 and 8 are contained different provisions in relation to criminals courts for the territorial and metropolitan areas in India. Thus, sections 6, 7 and 8 explained as under:

- **Section 6: Classes of Criminal Courts**

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

i. Courts of Session;
ii. Judicial Magistrates of the First class and, in any metropolitan area, Metropolitan Magistrates;
iii. Judicial Magistrates of the Second class; and
iv. Executive Magistrates."

- **Section 7: Territorial Divisions**

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

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

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

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

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

- **Section 8: Metropolitan areas**

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

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

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

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

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

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

In India, judiciary plays an important role of interpreting and applying the law and adjudicating upon controversies between the citizens, the States and various other parties. It is the function of the courts to uphold the rule of law in the country and to safeguard civil and political rights. As India has a written Constitution, courts have an additional function of safeguarding the supremacy of the Constitution by interpreting and applying its provisions and limiting the functioning of all authorities within the constitutional framework. As per the policy of separation of power between executive and judiciary, courts have been also classified mainly in two parts namely, Courts of Executive Magistrate and Courts of Judicial Magistrate.

Thus, the criminal courts are divided into following categories under the Cr.PC for the application of its different provisions, namely:

- The High Courts: Sections 6, 374 and 395
- Sessions Courts: Sections 9 and 10
- Judicial Magistrates: Sections 11 to 15
- Metropolitan Magistrates: Sections 16 to 19
- Executive Magistrates: Sections 20 to 23

2.6.1.1 The High Courts: Sections 6, 374 and 395

As per the provisions of sections 6, 374 and 395 of the Cr.PC, each of the States in India has the High Court, which stands at the head of the judiciary in the State and all these High Court posses appellate, reference and revisional jurisdiction over the inferior criminal courts.

2.6.1.2 Sessions Courts: Sections 9 and 10

According to section 7, Cr.PC., every State shall be a sessions division or shall consist of sessions divisions. A sessions division may consist of one or more districts. Under section 9 of Cr.PC, for every court of sessions, the High Court shall appoint a Judge to preside over the court. Provisions have also been made for appointment of Additional Sessions Judges and Assistant Sessions Judges. A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court. An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years. Thus, legal provisions in this context contained under sections 9, 10 and 28 of Cr.PC which run as under:

- **Section 9: Court of Session**

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

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

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

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such

case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

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

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

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

- **Section 10: Subordination of Assistant Sessions Judges**

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

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

(3) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions

Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application."

2.6.1.3 Judicial Magistrates: Sections 11 to 15

In every district, except the metropolitan area, there are courts of Judicial Magistrates of the first class and of the second class. Presiding Officers of such courts are appointed by the High Court under section 11(2) of the Cr.PC. The High Court may confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the judicial service of the State, functioning as a Judge in a civil court. On the other hand, to supervise the work of the Judicial Magistrates, the High Court appoints a Chief Judicial Magistrate in every district. The Court may also appoint an Additional Chief Judicial Magistrate, and may designate any Judicial Magistrate of the first class as Sub-divisional Judicial Magistrate. Every Chief Judicial Magistrate is subordinate to the Sessions Judge and every Judicial Magistrate, subject to the general control of the Sessions Judge, is subordinate to the Chief Judicial Magistrate. Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local jurisdiction of the areas within which the Judicial Magistrates may exercise their powers. The court of Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years. The court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both. However, the court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both. The legal provisions in this regard under Cr.PC are runs as under:

- **Section 11: Courts of Judicial Magistrates**

"(1) In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second

class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.

Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrate of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.

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

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

- **Section12: Chief Judicial Magistrate and Additional Chief Judicial Magistrate etc.**

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

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

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

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of

supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf."

- **Section13: Special Judicial Magistrates**

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

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

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

(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction."

- **Section14: Local jurisdiction of Judicial Magistrates**

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

Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.

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

(3) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area."

- **Section15: Subordination of Judicial Magistrates**

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

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

2.6.1.4 Metropolitan Magistrates: Sections 16 to 19

In India under Cr.PC, the courts of Metropolitan Magistrates have been established in metropolitan areas. For every metropolitan area there is a Chief Metropolitan Magistrate and under him a number of Metropolitan Magistrates. The presiding officers of such courts are appointed by the High Court. An Additional Chief Metropolitan Magistrate may be appointed by the High Court. The court of a Chief Metropolitan Magistrate has the powers of the court of a Chief Judicial Magistrate; and the court of a Metropolitan Magistrate has the powers of the court of a Magistrate of the first class. The High Court may, if requested by the Union or State Government to do so, confer upon any person who holds or has held any post under the Government, all or any of the powers

conferred or conferrable on a Judicial Magistrate of the first class or of the second class or a Metropolitan Magistrate. The persons who have been conferred such powers shall be called Special Judicial Magistrates or Special Metropolitan Magistrates. The legal provisions in this regard are runs as under:

- **Section 16: Courts of Metropolitan Magistrates**

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

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

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

- **Section 17: Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrates**

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

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

- **Section 18: Special Metropolitan Magistrates**

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

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

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

(3) The High Court or the State Government, as the case may be, may empower any Special Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judicial Magistrate of the first class."

- **Section 19: Subordination of Metropolitan Magistrates**

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

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

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

2.6.1.5 Executive Magistrates: Sections 20 to 23

Although Cr.PC has separated the judiciary from the executive, it still continues to describe Executive Magistrates as one of the classes of criminal courts under section 6 of the Cr.P.C. Generally the Executive Magistrates handle executive work which may be of quasi-judicial nature. However, in certain circumstances they can deal with judicial work, *i.e.,* section 167(2A) Cr.P.C. provides that where a Judicial Magistrate is not available, a person arrested by police can be

produced before the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred. Similarly, section 20 of Cr.P.C. provides that in every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them as District Magistrate. The State Government may also appoint Additional District Magistrate for a district. The State Government may place an Executive Magistrate in charge of a subdivision to be called Sub-divisional Magistrate. All Executive Magistrates except the Additional District Magistrate shall be subordinate to the District Magistrate. Sub-section (5) of section 20, Cr.PC. provides that nothing in section 20 shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area. In pursuance of these provisions, the State Governments have empowered the Commissioners of Police, Joint Commissioners of Police, Additional Commissioners of Police, Deputy Commissioners of Police and Assistant Commissioners of Police to exercise powers under sections 107, 108, 109, 110, 133, 144, etc. of the Cr.P.C.,1973 within the areas for which they are appointed. In addition to the above, there are also provisions for appointment of Special Executive Magistrates for particular areas or for particular functions. Such of the powers as are conferrable under the Cr.P.C. on Executive Magistrates may be conferred on the Special Executive Magistrates under section 21 of the Cr.P.C. Thus, sections 20, 21, 22 and 23 are runs as under:

- **Section 20: Executive Magistrates**

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

(2) The State Government may appoint any Executive Magistrate to be an Additional district Magistrate, and such Magistrate shall have such of the

powers of a District Magistrate under this Code or under any other law for the time being in force as may be directed by the State Government.

(3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.

(4A) The State Government may, be general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.

(5) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area."

- **Section 21: Special Executive Magistrates**

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

- **Section 22: Local jurisdiction of Executive Magistrates**

"(1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Code.

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

- **Section 23: Subordination of Executive Magistrates**

"(1) All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate."

Thus, it is important to note that powers of Executive Magistrates and Special Executive Magistrates shall be those which are provided by State Government.

2.6.1.6 Public Prosecutors: Sections 24 to 25A

A public prosecutor is a law officer who conducts criminal proceedings on behalf of the State or in the public interest. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the trial so that his interests in the prosecution are not prejudiced or jeopardized. Prosecutors are regulated and governed under Cr.PC. Along with these, there are special statutes where specific provision for the Public Prosecutor is given. The Prosecutors follow the rules of

evidence under the Indian Evidence Act, 1872 throughout the criminal proceedings. Thus sections 24, 25 and 25A of the Cr.PC contained the provisions in relation to prosecutor and these provisions runs as under:

- **Section 24: Public Prosecutors**

"(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub- section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

Explanation : For the purposes of this sub-section,-

(a) "regular Cadre of Prosecuting Officers" means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub- section (1) or sub- section (2) or sub-section (3) or sub- section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

(9) For the purposes of sub- section (7) and sub- section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate."

- **Section 25: Assistant Public Prosecutors**

"(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(1A) the Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed-

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector."

Section 25A: Directorate of Prosecution

"(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (3), or as the case may be, Sub-Section (8), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under Sub-Section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(8) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor."

Thus, it is crystal clear from the discussion of above mentioned sections that following are important types of Public Prosecutors, namely:

a) Public Prosecutor, Additional Public Prosecutors at High Courts and Sessions Courts

According to Cr.PC, after consultation with the High Courts, Central Government or State Government is empowered to appoint Prosecutors for purpose of prosecution, appeal or for any other purpose. The Code made it mandatory that every State Government appoint Public Prosecutors for every district in the State. For that purpose the District Magistrate prepares list of the interested candidates to be a District level Public Prosecutor or an Additional Public Prosecutor. The Sessions Judge, *i.e.*, the principal district Judge is consulted. Suitable candidate list is sent to the State and the State Government approves the list finally from the list it receives. Minimum seven years of

experience is mandatory for the candidates who apply for the post of Prosecutors. That experience should be of the Session's courts litigation. As long as the Prosecutor is on the roll of Prosecutors, he is not entitled to appear against the Government in any civil or criminal cases. In order to avoid clashes in interest, this provision is made and is strictly followed in India.

b) Special Public Prosecutors

The Special Public Prosecutors are appointed under sections 24 (8) of Cr.PC. They deal with the special cases registered under the special laws. At least 10 years practice is mandatory for the candidates willing to be Special Public Prosecutors. Also, the Special Public Prosecutors are appointed for CBI Courts under section 24 (8). The Special Public Prosecutors who deal with special offences punishable under the Indian Penal Code, 1860 or the Special Criminal Laws made either by the Central Government or the State Government respectively. Those special laws can be the Narcotic Drugs and Psychotropic Drugs Act, 1985 (NDPS), the Prevention of Money Laundering Act, 2002, the Scheduled Caste and Schedules Tribes (Prevention of Atrocities) Act, 1987 etc. These Special Public Prosecutors are appointed for a fix period and are paid comparatively higher than the Public Prosecutors working in the Session's court or the High courts. Upon special request from the police or Public or sometimes the State Government or the Central Government on its own appoint Special Public Prosecutors.

c) Assistant Public Prosecutors at the Magistrates Courts

The Assistant Public Prosecutors are the Prosecutors dealing with the cases in Magisterial Courts. The State Government conducts competitive examinations through its respective State Public Service Commissions. Their jurisdiction is limited to Judicial Magistrate First Class, Judicial Magistrate Second Class, Metropolitan Magistrates Court and the Chief Judicial Magistrate Courts. These assistant Public Prosecutors are appointed by States. Police officers are not entitled to work as Prosecutors. The District Magistrate may appoint any person

as Public Prosecutor if he or she is not an investigating officer in a specific case and he / she is of or above the rank of Inspector. These Prosecutors are regular full time Prosecutors appointed by the Home Ministry of the respective State Government. They are entitled to receive benefits from Government such as retention, monthly salary, perks, etc. The District Magistrate is entitled to appoint any person as Prosecutors in the absence of specific Prosecutor on particular occasion. However, this appointment can be made irrespective of that appointee's qualification in the field of law and competence to represent the interest of the State.

2.6.3 References and Suggested Books

1. R.V. Kelkar, "Criminal Procedure", Eastern Book Company, Lucknow, 1st edn., 1977, Reprinted 2011.
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LESSON NO. 2.7 SECTION-D AUTHOR : DR. ARPINDER SINGH KHAIRA

POWERS OF CRIMINAL COURTS

An Overview

2.7.0 Introduction

The Criminal justice system refers to the structure, functions, and decision processes of agencies that deal with the crime prevention, investigation, prosecution, punishment, correction etc. Therefore, a well defined criminal law is the foundation on which the whole structure of criminal justice system stands. It is the responsibility of the legislators to make the foundation strong by making criminal laws sound in all respects. The law of criminal procedure is intended to provide a mechanism to protect the society from criminals and law breakers. So, for the protection of the rights of the people, there is special type of mechanisms *viz.,* police, public prosecutors, defence councils, prison authorities, courts etc., in the Code of Criminal Procedure, 1973 (hereinafter read as Cr.PC). These mechanisms exercising their powers and perform duties for the betterment of society. In this context, the Cr.PC contained several provisions for the above said machinery in Chapter II entitled 'Constitution of Criminal Courts and Offices' from sections 6 to 25A and Chapter III entitled 'Power of Courts' from sections 26 to 35. In other words, the following provisions of the Cr.PC deals with this concept:

- Classification of Criminal Courts: Sections 6 to 23
- Public Prosecutors: Sections 24 to 25A

- Power of Criminal Courts: Sections 26 to 35

2.7.1 Powers of Criminal Courts: Sections 26 to 35

Chapter III, sections 26 to 35 of the Cr.PC deals with three different aspects, *viz.,*

a) The Courts by which offences are triable

b) The sentences which these courts can pass

c) The mode of conferring the powers on and withdrawal of powers

The last two provisions are directly and indirectly deal with the exercise of powers of judges and Magistrates by their successors in office of criminal courts. Sections 28 to 35 of the Cr.PC are runs as under:

- **Section 28: Sentences which High Courts and Sessions Judges may pass**

"(1) A High Court may pass any sentence authorized by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years."

- **Section 29: Sentences which Magistrates may pass**

"(1) The Court of a Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees, or of both.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees, or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class."

- **Section 30: Sentence of imprisonment in default of fine**

"(1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law:

Provided that the term-

(a) is not in excess of the powers of the Magistrate under section 29;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 29."

- **Section 31: Sentence in cases of conviction of several offences at one trial**

"(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860) sentence him for such offences, to the several punishments prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that-

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."

- **Section 32: Mode of conferring powers**

"(1) In conferring powers under this Code, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered."

- **Section 33: Powers of officers appointed**

"Whenever any person holding an office in the service of Government who has been invested by the High Court or the State Government with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same State Government, he shall, unless the High Court or the State Government, as the case may be, otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed."

- **Section 34: Withdrawal of Powers**

"(1) The High Court or the State Government, as the case may be, may withdraw all or any of the powers conferred by it under this Code on any person or by any officer subordinate to it.

(2) Any powers conferred by the Chief Judicial Magistrate or by the District Magistrate may be withdrawn by the respective Magistrate by whom such powers were conferred."

- **Section 35: Powers of Judges and Magistrates exercisable by their successors-in-office**

"(1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office.

(2) When there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Additional or Assistant Sessions Judge.

(3) When there is any doubt as to who is the successor-in-office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order in writing the Magistrate who shall, for the purpose of this Code or of any proceedings or order there under, be deemed to be the successor-in-office of such Magistrate."

Hence, the above description of the judiciary as a component of the criminal justice system shows that a well-defined hierarchy of criminal courts exists in India to administer criminal justice. The very fact that the Constitution itself contains elaborate provisions for the judiciary including the subordinate courts, indicates the importance the framers of the Constitution accorded to this important organ of criminal justice administration.

2.7.2 References and Suggested Books

1. R.V. Kelkar, "Criminal Procedure", Eastern Book Company, Lucknow, 1st edn., 1977, Reprinted 2011.
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LESSON NO. 2.8 SECTION-D AUTHOR : DR. ARPINDER SINGH KHAIRA

CONSTITUTIONAL PROTECTIONS AND CONVICTION

An Overview

2.8.0 Introduction

The Criminal Justice System "revolves around the accused". The object of the criminal trial is to dispense justice according to law of the land. The accused person faces the accusation for commission of some offence. The Law is set in motion from the moment of receipt of information about commission of an offence by police and lodging First Information Report (hereinafter read as FIR) in the Police Station. The police is expected to investigate the commission of the offence in accordance with procedure established by law. The objective of investigation is to collect evidence and to trace out and arrest the offender to face the accusation. The conviction or acquittal of the accused depends on the gravity and reliability of evidence. The criminal justice system thus starts from the police station and ends up in jail where offender undergoes the sentence. The accused person is presumed to be innocent unless proved otherwise. This principle runs like a golden thread through the entire faerie of our criminal jurisprudence. Equally vital principle of criminal jurisprudence is that burden of proving beyond reasonable doubt the guilt of accused lies on the prosecution. These two cardinal principles are foundation of the criminal justice system and inherited from British legal system. The offenders are human beings and they deserve to be treated so. The attitudes of the society towards the offenders have also undergone a change with the passage of time. In ancient times accused

persons were punished with all brutalities and treated like animals, though some rights were available to the accused person. Now person behind the bars have all Constitutional rights. The basic fundamental rights and freedom cannot be denied even to the person in police lock up or jail. The Magna Carta declared basic rights for the people of U. K. in 1215 but the concept of "human rights" at universal level came through the Universal Declaration of Human Rights in 1948 which affirmed the 'laith in fundamental human rights in the dignity and worth of human person, in the equal rights of man and woman. This Universal Declaration also affected the minds of makers of the Indian Constitution who were drafting the Constitution at the contemporary period. Therefore, all human rights find place in Part-Ill (Fundamental Rights) of Indian Constitution.

The term 'accused' is though used in the Constitution of India and the Code of Criminal Procedure, 1973, but it has not been defined. Term "accused of any offence" has been used in Article 20 (3) of the Constitution. It is clear that there is always a "accusation", against the "accused person." The accused had some basic rights and with the passage of time new rights have emerged. The system for dispensation of justice keeps on changing. In the beginning the objective of trial of the person accused of an offence, was to punish the offender. For some time, 'tooth for tooth and eye for eye' rule also prevailed. Now offenders are treated like sick human beings who can be reformed and rehabilitated. The accused is also a person and citizen, therefore, he cannot be denuded of Constitutional rights and fundamental freedoms.

The Constitution of India is the law of all laws in the land. It not only guides but also ensured strict compliance of all the directions it has provided in itself in the course of the implementation of all civil, criminal and other laws of the country. The Constitution of India has prescribed certain Constitutional standards by proclaiming these yardsticks in the form of fundamental rights of the accused persons. The Constitutional values are also reflected in the procedural and substantive penal laws in detail. They are to be understood not only in the form and manner in which they are chartered in the Constitution and the penal laws but they must also be seen and appreciated in the light of the interpretation of these rights as proclaimed from time to time by the Supreme Court of India. Though the prison has been a very sensitive issue in all the nations of the world but the systems and treatment varies from nation to nation governments along with the non-government organizations, institutions are trying to improve the conditions of inmates. Various attempts have been

made to protect the rights of the accused persons through Constitutional and other statutory provisions at both national and international level.

2.8.1 Constitutional Protections and Conviction

The fundamental rights guaranteed under the Indian Constitution are not absolute and many restrictions have been imposed on their enjoyment. Right to freedom of the person is one of the most important rights among the fundamental rights. When a person is convicted or put in the prison his status is different from that of an ordinary person. A prisoner cannot claim all the fundamental rights that are available for an ordinary person. However, certain rights which have been enumerated in the Constitution are available to the prisoners also because a prisoner remains a "person" inside the prison. The Supreme Court of India and various High Courts have also discussed these rights in their laudable decisions and in this context, following are the main Constitutional protections in respect of conviction:

2.8.1.1 The Preamble

The Preamble of the Constitution of India declares that "We the people of India have solemnly resolved to constitute India into sovereign, socialist, secular, democratic republic and to secure all its citizens:

Justice-social, economic and political;

Liberty-thought and expression, belief and faith;

Equality-of status and opportunity and to promote among them all;

Fraternity- assuring the dignity of individuals and unity and integrity of the nation.

It means that even the Constitution from its inception has kept individuals in mind before its promulgation as the Constitution is made to defend and protect its people and to establish peace and harmony in the society. Following rights are provided to accused person in the shape of fundamental rights.

- **Rights to Equality: Article 14**

According to Article 14 of the Indian Constitution, “The State shall not deny to any person equality before law or the equal protection of laws within the territory of India.” This is one of the important provisions of the Indian Constitution which is generally applied by the courts in which the principle of equality is embodied. The rule that "like should be treated alike" and the concept of reasonable classification as contained in the Article 14 has been a very useful guide for the courts to determine the category of prisoners and their basis of classification in different categories.

2.8.1.2 Constitutional Protection in respect of conviction of offences: Article 20

The Article 20 is one of the pillars of fundamental rights guaranteed by the Constitution of India. It mainly deals with protection of certain rights in case of conviction for offences. When an individual as well as corporations are accused of crimes, the provisions of Article 20 safeguard their rights and the Article 20 runs as under:

- **Article 20: Protection in respect of conviction for offence**

"(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
(2) No person shall be prosecuted and punished for the same offence more than once.
(3) No person accused of any offence shall be compelled to be a witness against himself."
Thus, Article 20 of Indian Constitution provides the following safeguards to the persons accused of crimes:

(i) Protection against retrospective criminal law (Ex-post facto Law).

(ii) Immunity from double punishment (Double Jeopardy).

(iii) Immunity from being compelled to be a witness against himself (Self-incrimination).

- **Ex-post facto Law**

Article 20(1) states that, "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to any greater penalty than that which might have been inflicted under the law in force at the time of the commission of an offence." Hence, this clause makes the provision regarding *ex post facto* law. The *ex-post facto* guarantee means that:

a. No person shall be convicted of an offence, if there was none in force, at the time of the commission of the impugned act, which is subsequently made to be an offence. In other words, it prohibits the creation of a new

offence, the punishment for which is prescribed retrospectively, as if it had been in existence before.

b. Any law so made retrospectively cannot be impeached solely on the ground that it is retrospective in nature and acts ex-post facto.

The term 'penalty' in Article 20(1) refers to a punishment for an offence. The clause has no application to cases of preventive detention. They are not to be covered under Article 20(1) as there is no formal accusations and there is no formal judicial proceedings for imposition of a penalty.

It is relevant to mention here that the thrust of Article 20 (1) is in the field of criminal law only, since the word 'offence' as defined in Article 367 read with section 3(38) of the General Clauses Act, 1897 can only denote an act or omission punishable by law.

- **Double Jeopardy**

Article 20(2) of the Constitution of India guarantees that: "No person shall be prosecuted and punished for the same offence more than once." Thus, Article 20(2) of the Constitution of India is based on the celebrated maxim *Nimo bis debit puniri pro uno delicto,* which means that no one ought to be twice punished for one offence. The principle underlying the protection to an accused under Article 20(2) is also known as the
autrefois convict or Double Jeopardy. The genesis of this maxim can be well found in the English Common Law principles where it was felt that, "when a person has been convicted for an offence by a court of competent jurisdiction, the conviction is a bar to all further criminal proceedings for the same offence." For the protection of Article 20(2) three elements are necessary to be established:

1. A previous prosecution has taken place
2. A punishment has ensued or acquittal as well.
3. The punishment or acquittal is for the same offence.

It is important to mention here that, not only the Constitution of India, but section 26 of the General Clauses Act, 1897 and section 300 the Code of Criminal Procedure, 1973 have also recognized the same right of an accused person.

The Supreme Court of India, in the case of **State of Rajasthan v. Hat Singh (AIR 2003 SC 791)** has held that a subsequent trail or prosecution and punishments are not barred if the ingredients of the two offences are distinct.

- **Self-incrimination**

Article 20(3) of the Constitution of India states that, "no person accused of any offence shall be compelled to be a witness against himself."

The principle of immunity from self incrimination is the outcome of the doctrine of presumption of innocence of the accused. It is important to mention here that immunity under Article 20(3) does not extend to compulsory production of material objects or compulsion to give specimen writing, signature, finger impression, or compulsory exhibition of the body or giving of blood specimens. It is important to mention that compulsion in the present context means duress which must be proved and compulsion may be of many forms, may be physical or mental.

2.8.1.3 Constitutional Protection of Life and Personal Liberty: Article 21

The right to personal liberty has now been given a very wide interpretation by the Supreme Court of India in several cases. Article 21 of the Indian Constitution contained the provision in this respect and Article 21 runs as under:

- **Article 21: Protection of life and personal liberty**

"No person shall be deprived of his life or personal liberty except according to procedure established by law".

Thus, this right is available not only for the free people but even to those behind bars or accused. The right to speedy trial, free legal aids, right against torture, and right against inhuman and degrading treatment accompany a person into the prison also.

So far as the rights of prisoners and accused are concerned, Article 21 of the Indian Constitution has been a major centre of litigation, because it embodies the principle of liberty. This provision has been used by the Supreme Court of India to protect certain important rights of the prisoners. After **Maneka Gandhi case (AIR 1978 SC 597)**, this Article has been used against the arbitrary actions of the executive especially the prison authorities. After that decision it has been established that there must be a fair and reasonable procedure for the deprivation of the life and the personal liberty of the individuals. The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed the human rights theology for the preservation and protection of prisoner's rights to maintain human dignity. Although it has clearly been mentioned that the deprivation of Article 21 is justifiable according to procedure established by law, this procedure cannot be arbitrary, unfair or unreasonable. In the case of

Maneka Gandhi v. Union of India (AIR 1978 SC 597), the Apex Court opened up a new dimension and lay down that the procedure cannot be arbitrary, unfair or unreasonable. Article 21 imposed that the restriction upon the State where it is prescribed the procedures for depriving a person of his life or personal liberty. In **Sunil Batra v. Delhi Administration (AIR 1978 SC 1675)**, the Supreme Court held that an undertrial or convicted prisoner cannot be subjected to a physical or mental restraint. Similarly in the case of **Sher Singh v. State of Punjab (AIR 1983 SC 465),** the Supreme Court held that unjustifiable delay in execution of death sentence violates Article 21 of the Indian Constitution. In the case of **Attorney General of India v. Lachma Devi (AIR 1986 SC 467)** the Supreme Court held that public hanging (execution of death sentence) is violation of Article 21, which mandates the observance of a just, fair and reasonable procedure. Likewise in **D.K. Basu v. State of West Bengal (AIR 1997 SC 610),** the Supreme Court described that, "custodial death has been as one of the worst crime in a civilized society, governed by the rule of law".

Thus, Article 21, if read literally is a colourless Article, and but in wider sense, it would be satisfied, the moment it is established by the State that there is a law which provides a procedure which has been followed by the impugned action. Hence, right to life and the right to personal liberty in India have been guaranteed by the Constitutional provisions, which has received the widest possible interpretation. Under the canopy of Article 21, so many rights have found shelter, growth and nourishment. An intelligent citizen would like to be aware of the developments in this regard, as they have evolved from the judicial decisions.

2.8.2 Reference and Suggested Books

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