

# **The Code of Criminal Procedure**

# CHAPTER- I PRELIMINARY

**Definitions.**—In this Code, unless the context otherwise requires,—

- (a) “**bailable offence**” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and “non-bailable” offence means any other offence;
- (b) “**charge**” includes any head of charge when the charge contains more heads than one;
- (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;
- (d) “**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.

- (g) “**inquiry**” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;
- (h) “**investigation**” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;
- (i) “**judicial proceeding**” includes any proceeding in the course of which evidence is or may be legally taken on oath;
- (l) “**non-cognizable offence**” means an offence for which, and “non-cognizable case” means a case in which, a police officer has no authority to arrest without warrant;
- (n) “**offence**” means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871);

(r) “**police report**” means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

(w) “**summons-case**” means a case relating to an offence, and not being a warrant-case;

(w) “**warrant-case**” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

#### **4. Trial of offences under the Indian Penal Code and other laws.—**

- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
- (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.

## CHAPTER II-CONSTITUTION OF CRIMINAL COURTS AND OFFICES

**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.

## **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 Session 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.

## 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:

1[Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates 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.]



## **12. 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.
- (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.

## **15. 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.

## 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 <sup>3</sup>[such] of the powers of a District Magistrate under this Code or under any other law for the time being in force <sup>4</sup>[as may be directed by the State Government].

## **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.

## **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).

## **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.
- 3[(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:

# CHAPTER III- POWER OF COURTS

**26. Courts by which offences are triable.**—Subject to the other provisions of this Code,—

- (a) any offence under the Indian Penal Code (45 of 1860) may be tried by-
  - (i) the High Court, or
  - (ii) the Court of Session, or
  - (iii) any other Court by which such offence is shown in the First Schedule to be triable
  
- (b) 2[Provided that any <sup>3</sup>[offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860)] shall be tried as far as practicable by a Court presided over by a woman.]



- (b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by—
- (i) the High Court, or
  - (ii) any other Court by which such offence is shown in the First Schedule to be triable.

## **28. Sentences which High Courts and Sessions Judges may pass.—**

- (1) A High Court may pass any sentence authorised by law.
- (2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised 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 authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

## **29. Sentences which Magistrates may pass.—**

- (1) The Court of a Chief Judicial Magistrate may pass any sentence authorised 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 <sup>1</sup>[ten thousand rupees], or of both.
- (3) The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding <sup>2</sup>[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.

### **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 authorised 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.

### 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—

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

# Arrest

- **Sec 64 of IFA, 1927. Power to arrest without warrant**
- (1) Any Forest-officer or Police-officer may, *without orders from a Magistrate and **without a warrant***, arrest any person against whom a **reasonable suspicion** exists of his having been concerned in any forest-offence punishable with *imprisonment for one month or upwards*.
- (2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.
- (3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under *Chapter IV unless such act has been prohibited under clause (c) of section 30*.
- **(41-60 CrPC)**

## CHAPTER V

### **ARREST OF PERSONS**

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### **39. Public to give information of certain offences.—**

- (1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860),namely:—**
- (i) sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);**
  - (ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);**
  - (iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);**
  - (iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);**

- (v) sections 302, 303 and 304 (that is to say, offences affecting life);  
[(va) section 364A (that is to say, offence relating to kidnapping for ransom, etc.);]
- (vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);
- (vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);
- (viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);
- (ix) sections 431 and 439, both inclusive (that is to say, offences of mischief against property);
- (x) sections 449 and 450 (that is to say, offence of house trespass);

(vi) sections 456 to 460, both inclusive (that is to say, offences of lurking house trespass);and

(vii) Sections 489A to 489E,both inclusive (that is to say, offences relating to currency notes and bank notes),

**shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.**

(2) For the purposes of this section, the term “offence” includes any act committed at any place out of India which would constitute an offence if committed in India.

## CHAPTER V ARREST OF PERSONS

### 41 When police may arrest without warrant.—

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the *presence of* a police officer, a *cognizable offence*;

(b) against whom a *reasonable complaint* has been made, or *credible information* has been received, or a *reasonable suspicion* exists that he has committed a *cognizable offence* punishable with imprisonment for a term which may be less than seven years or which may extend to *seven years* whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

- (ii) the police officer is satisfied that such arrest is necessary—
- (a) to prevent such person from committing *any further offence*; or
  - (b) for *proper investigation* of the offence; or
  - (c) to prevent such person from causing the *evidence of the offence to disappear or tampering* with such evidence in any manner; or
  - (d) to prevent such person from *making any inducement, threat or promise* to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
  - (e) as unless such person is arrested, his *presence in the Court* whenever required cannot be ensured,

**and the police officer shall record while making such arrest, his reasons in writing.**

(ba) against whom *credible information* has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to *more than seven years* whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;]

(c) who has been *proclaimed as an offender* either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be *stolen property* and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who *obstructs* a police officer while in the execution of his duty, or who has *escaped*, or attempts to escape, from lawful custody; or

- (f) who is reasonably suspected of being a *deserter* from any of the Armed Forces of the Union; or
- (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at *any place out of India* which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
- (h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest *any requisition, whether written or oral, has been received from another police officer*, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

**1[(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.]**



## **[41A. Notice of appearance before police officer.—**

- (1) <sup>3</sup>[The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.
- (2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.
- (3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.]

## **41B. Procedure of arrest and duties of officer making arrest.**

Every police officer while making an arrest shall—

- (a) bear an *accurate, visible and clear identification of his name* which will facilitate easy identification;
- (b) prepare a *memorandum of arrest* which shall be—
  - (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;
  - (ii) countersigned by the person arrested; and
- (c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a *right to have a relative or a friend named by him to be informed of his arrest.*

**41D. Right of arrested person to meet an advocate of his choice during interrogation.**—When any person is arrested and interrogated by the police, he shall be *entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.*

**42. Arrest on refusal to give name and residence.—**

(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a *non-cognizable* offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be *released on his executing a bond*, with or without sureties, to appear before a Magistrate if so required:

Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.

(3) Should the true name and residence of such person not be ascertained *within twenty-four hours* from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

### 43. Arrest by private person and procedure on such arrest.—

- (1) Any *private person* may arrest or cause to be arrested any person who in his presence commits a *non-bailable and cognizable* offence, or any *proclaimed offender*, and, *without unnecessary delay*, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.
- (2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.
- (3) If there is reason to believe that he has committed a *non-cognizable offence*, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

#### **44. Arrest by Magistrate.—**

- (1) When *any offence* is committed *in the presence of a Magistrate, whether Executive or Judicial*, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.
  
- (2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

## **45. Protection of members of the Armed Forces from arrest.—**

- (1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested *for anything done or purported to be done by him in the discharge of his official duties* except after obtaining the consent of the Central Government.
- (2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Force 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 shall apply as if for the expression —“ Central Government” occurring therein, the expression —“State Government” were substituted.



## 46. Arrest how made.—

(1) In making an arrest the police officer or other person making the same shall *actually touch or confine the body of the person to be arrested*, unless there be a submission to the custody by word or action:

1[Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.]

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may *use all means necessary to effect the arrest*.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

(4) 2[(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.]

## **47. Search of place entered by person sought to be arrested.—**

- (1) If any person acting under warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him *free ingress thereto, and afford all reasonable facilities for a search therein.*
  
- (2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to *enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:*

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the persons to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

#### **48. Pursuit of offenders into other jurisdictions.—**

A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.

**49. No unnecessary restraint.—**The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

#### **50. Person arrested to be informed of grounds of arrest and of right to bail.—**

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him *full particulars of the offence for which he is arrested* or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is *entitled to be released on bail and that he may arrange for sureties on his behalf*.

## **1[50A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person.—**

- (1) Every police officer or other person making any arrest under this Code shall forthwith give the *information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated* by the arrested person for the purpose of giving such information.
- (2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.
- (3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.
- (4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.]

## **56. Person arrested to be taken before Magistrate or officer in charge of police station**

A police officer making an arrest *without warrant shall, without unnecessary delay* and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station

- 57. Person arrested not to be detained more than twenty-four hours.**—No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed *twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.*
- 58. Police to report apprehensions.**—Officers in charge of police stations shall *report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant,* within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.
- 59. Discharge of person apprehended.**—No person who has been arrested by a police officer shall be discharged except on his *own bond, or on bail, or under the special order of a Magistrate.*

# Witness, Real Evidence, Search Warrant

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Sec (72) of IFA 1927 – State Government may invest any Forest Officer with all or any of following power:-

- (1)
  - a. Power to enter upon any land
  - b. Power of civil court to **compel the attendance of witnesses (61-69 CrPC) & production of documents/material objects (91 CrPC).**
  - c. **Power to issue a search warrant under Code of Criminal Procedure 1898. (93-105 CrPC)**
  - d. Power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.
- (2) Any evidence recorded under clause (d) shall be admissible in any subsequent trial before a magistrate provided that it has been taken in the presence of the accused person.



## CHAPTER VI

### PROCESSES TO COMPEL APPEARANCE

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#### CHAPTER VI A

#### SUMMONS

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- SECTION 69 SERVICE OF SUMMONS ON WITNESS BY POST

#### CHAPTER VI B WARRANT OF ARREST

## CHAPTER VI- PROCESSES TO COMPEL APPEARANCE—Summons

**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.

### **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*.

**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 principal 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.

#### **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.

#### **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.

#### **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 *send 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.

## **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.

## **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 and returned to the Court.

## **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 acknowledgement 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.*

# Warrant of arrest

## **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.*

## **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 to 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.

## **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*.

## **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.

**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.

**77. Where warrant may be executed.**—A warrant of arrest may be executed at any place in India.



## 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

## CHAPTER VII- PROCESSES TO COMPEL THE PRODUCTION OF THINGS

### Summons to produce

#### 91. Summons to produce document or other thing.—

- (1) Whenever any Court or any officer in charge of a police station considers that the *production of any document or other thing* is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.
- (2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if *he causes such document or thing to be produced instead of attending personally to produce the same.*
- (3) Nothing in this section shall be deemed—
  - (a) To affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or
  - (b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

# Search-warrants

## **93. When search-warrant may be issued.—**

(1) (a) Where any Court has reason to believe that a person to whom a summons order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b) where such document or thing is not known to the Court to be in the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

# General provisions relating to searches

## **99. Direction, etc., of search-warrants.—**

The provisions of sections 38, 70, 72, 74, 77, 78 and 79 shall, so far as may be, apply to all search-warrants issued under section 93, section 94, section 95 or section 97.

## **100. Persons in charge of closed place to allow search.—**

(1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

## **101. Disposal of things found in search beyond jurisdiction.—**

When, in the execution of a search-warrant at any place beyond the local jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

## CHAPTER XII-INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

### **154. Information in cognizable cases.—**

1. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
2. (2)A copy of the information as recorded under subsection (1) shall be given forthwith, free of cost, to the informant.



3. Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

## **155. Information as to non-cognizable cases and investigation of such cases.—**

- (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.
- (2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

- (3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.
- (4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

## **156. Police officer's power to investigate cognizable case.—**

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

## **157. Procedure for investigation.—**

- (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

### **Provided that—**

- (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
- (b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

<sup>1</sup>[Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.]

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

## **160. Police officer's power to require attendance of witnesses.—**

(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person 2[under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

## **161. Examination of witnesses by police.—**

- (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
  
- (2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.



(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

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

## **162. Statements to police not to be signed: Use of statements in evidence.—**

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act , 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

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

## **164. Recording of confessions and statements.—**

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

2[Provided that any confession or statement made under this subsection may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.]

(2)The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—

“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A.B.  
Magistrate

- (5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.
- (6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

## **164A. Medical examination of the victim of rape.—**

- (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.
- (2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:—
  - a. the name and address of the woman and of the person by whom she was brought;
  - b. the age of the woman;
  - c. the description of material taken from the person of the woman for DNA profiling;
  - d. marks of injury, if any, on the person of the woman;
  - e. general mental condition of the woman; and
  - f. other material particulars in reasonable detail.

- (3) The report shall state precisely the reasons for each conclusion arrived at.
- (4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.
- (5) The exact time of commencement and completion of the examination shall also be noted in the report.
- (6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of subsection (5) of that section.
- (7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.



## **165. Search by police officer.—**

- (1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.
- (2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person.

- (3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.
- (4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.
- (5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

### **173. Report of police officer on completion of investigation.—**

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

2[(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom

- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.
- <sup>1</sup>[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C <sup>2</sup>[376D or section 376E of the Indian Penal Code (45 of 1860)].]

- (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.
  
- (3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.
  
- (4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

- (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—
- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
  - (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.
- (6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

- (7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).
- (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

# CHAPTER XIV-CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS

## **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.



## **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 1[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—
- (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:

2[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 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.]

# CHAPTER XV COMPLAINTS TO MAGISTRATES

## 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 complaint; 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.

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.

## **202. Postponement of issue of process.—**

- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1[and shall, in a case where the accused is residing at a place beyond the area in which he exercises 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:
- (2) 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.

## **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.

# CHAPTER XVI COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

## **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) 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.



## **205. Magistrate may dispense with personal attendance of accused.—**

- (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.
- (2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

## **206. Special summons in cases of petty offence.—**

(1) If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 260 <sup>1</sup>[or section 261], the Magistrate shall, except where he is, for reasons to be recorded in writing of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing, the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader:

Provided that the amount of the fine specified in such summons shall not exceed <sup>2</sup>[one thousand rupees].

(2) For the purposes of this section, —petty offence means any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939 (4 of 1939)<sup>3</sup>, or under any other law which provides for convicting the accused person in his absence on a plea of guilty.

<sup>4</sup>[(3) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 or any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.]

# TRIAL OF WARRANT-CASES BY MAGISTRATES

**238. Compliance with section 207.**—When, in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207.

**239. When accused shall be discharged.**—If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

**240. Framing of charge.**—

(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

**241. Conviction on plea of guilty.**—If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

**242. Evidence for prosecution.**—

(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241, the Magistrate shall fix a date for the examination of witnesses:

1[Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.]

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

(4) Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

### **243. Evidence for defence.—**

(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

# Cases instituted otherwise than on police report

## **244. Evidence for prosecution.—**

(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

## **245. When accused shall be discharged.—**

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

## **246. Procedure where accused is not discharged.—**

- (1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.
- (2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.
- (3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.
- (4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.



(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.

# Conclusion of trial

## **248. Acquittal or conviction.—**

(1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

(3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2).

**249. Absence of complainant.**—When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

## **250. Compensation for accusation without reasonable cause.—**

- (1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.
- (2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

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

(4) When any person is imprisoned under sub-section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

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

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

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons-cases as well as to warrant-cases.

# TRIAL OF SUMMONS-CASES BY MAGISTRATES

**251. Substance of accusation to be stated.**—When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

**252. Conviction on plea of guilty.**—If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon.

**253. Conviction on plea of guilty in absence of accused in petty cases.**—

(1) Where a summons has been issued under section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons

The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the pleader and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.

**254. Procedure when not convicted.—**

- (1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence
- (2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.
- (3) The Magistrate may, before summoning any witness on such application require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.



## **255.Acquittal or conviction.—**

(1) If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3) A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

## **256. Non-appearance or death of complainant.—**

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

**257. Withdrawal of complaint.**—If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

**258. Power to stop proceedings in certain cases.**—In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

## **259. Power of Court to convert summons-cases into warrant-cases.—**

When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may re-call any witness who may have been examined.

# CHAPTER XXI SUMMARY TRIALS

## **260. Power to try summarily—**

(1) Notwithstanding anything contained in this Code—

(a) any Chief Judicial Magistrate;

(b) any Metropolitan Magistrate;

(c) any Magistrate of the first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:—

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed 1[two thousand rupees];

(iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed 1[two thousand rupees];

(iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860), where the value of such property does not exceed 1[two thousand rupees];

(v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);

(vi) insult with intent to provoke a breach of the peace, under section 504, and 2[criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both], under section 506 of the Indian Penal Code (45 of 1860);

(vii) abetment of any of the foregoing offences;

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

any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871).

(2) When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by this Code.

## **261. Summary trial by Magistrate of the second class.—**

The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second class power to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence.

## **262. Procedure for summary trials.—**

(1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

**263. Record in summary trials.**—In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely:—

- the serial number of the case;
- the date of the commission of the offence;
- the date of the report or complaint;
- the name of the complainant (if any);
- the name, parentage and residence of the accused;
- the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause (iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed;
- the plea of the accused and his examination (if any);
- the finding;
- the sentence or other final order;
- the date on which proceedings terminated.



**264. Judgment in cases tried summarily.**—In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

**265. Language of record and judgment.**—

(1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

## CHAPTER XXIII EVIDENCE IN INQUIRIES AND TRIALS

**272. Language of Courts.**—The State Government may determine what shall be, for purposes of this Code, the language of each Court within the State other than the High Court.

**273. Evidence to be taken in presence of accused.**—Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader:

<sup>1</sup>[Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.]

## **274. Record in summons-cases and inquiries.—**

(1) In all summons-cases tried before a Magistrate, in all inquiries under sections 145 to 148 (both inclusive), and in all proceedings under section 446 otherwise than in the course of a trial, the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of the evidence in the language of the Court:

Provided that if the Magistrate is unable to make such memorandum himself, he shall, after recording the reason of his inability, cause such memorandum to be made in writing or from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the record.

## **275. Record in warrant-cases.—**

(1) In all warrant-cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open Court or, where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf:

· <sup>2</sup>[Provided that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.]

(2) Where the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub-section (1).

(3) Such evidence shall ordinarily be taken down in the form of a narrative; but the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(4) The evidence so taken down shall be signed by the Magistrate and shall form part of the record.

## **277. Language of record of evidence.—**

In every case where evidence is taken down under section 275 or 276,—

- if the witness gives evidence in the language of the Court, it shall be taken down in that language;
- if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;
- where under clause (*b*) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:

Provided that when under clause (*b*) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

## **281. Record of examination of accused.—**

- (1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.
- (2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.
- (3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable, in the language of the Court.

(4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(5) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

### **374. Appeals from convictions.—**

- (1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.
- (2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years <sup>1</sup>[has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.
- (3) Save as otherwise provided in sub-section (2), any person,—
  - (a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or



(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session.

### **375. No appeal in certain cases when accused pleads guilty.—**

Notwithstanding anything contained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,—

- if the conviction is by a High Court; or
- if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

**No appeal in petty cases.**—Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:—

- a. where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;
- b. where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;
- c. where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or
- d. where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground—

- i. that the person convicted is ordered to furnish security to keep the peace; or
- ii. that a direction for imprisonment in default of payment of fine is included in the sentence; or
- iii. that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

## **Appeal by the State Government against sentence.—**

- (1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present <sup>2</sup>[an appeal against the sentence on the ground of its inadequacy—
- a. to the Court of Session, if the sentence is passed by the Magistrate; and
  - b. to the High Court, if the sentence is passed by any other Court.]
- (2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, <sup>1</sup>[the Central Government may also direct] the Public Prosecutor to present <sup>2</sup>[an appeal against the sentence on the ground of its inadequacy—

- a. to the Court of Session, if the sentence is passed by the Magistrate; and
- b. to the High Court, if the sentence is passed by any other Court].

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, <sup>3</sup>[the Court of Session or, as the case may be, the High Court] shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

### **378. Appeal in case of acquittal.—**

<sup>4</sup>[(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—

- a. the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
- b. the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

- If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, <sup>5</sup>[the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—
  - a. to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
  - b. to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision].

- <sup>6</sup>[No appeal to the High Court] under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.
- If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.
- No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.



### **397. Calling for records to exercise powers of revision.—**

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

### **399. Sessions Judge's powers of revision.—**

- (1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.
- (2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.
- (3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

# CHAPTER XXXIII- PROVISIONS AS TO BAIL AND BONDS

## 436. In what cases bail to be taken.—

(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

- Provided that such officer or Court, if he or it thinks fit, <sup>1</sup>[may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail] from such person, discharge him on his executing a bond without sureties for his appearance as herein after provided.

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116<sup>3</sup>[or section 446A].

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

**451. Order for custody and disposal of property pending trial in certain cases.**—When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

**452. Order for disposal of property at conclusion of trial.**

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

- (2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without securities, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.
- (3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.
- (4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

## CHAPTER XXXVI<sup>1</sup> - LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES

### **468. Bar to taking cognizance after lapse of the period of limitation.—**

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

- a. six months, if the offence is punishable with fine only;
- b. one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- c. three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.



2[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

#### **469. Commencement of the period of limitation.—**

**(1)** The period of limitation, in relation to an offender, shall commence,—

- on the date of the offence; or
- where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
- where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.