

PROCEDURE IN DIFFERENCE TYPES OF CRIMINAL TRIALS.

The Code of Criminal Procedure 1973 (*in short* Cr.P.C.) is a procedural law providing the mechanism in which manner the criminal trial is to be conducted on the basis of substantive criminal law i.e. I.P.C. and other criminal statute. The primary object of the criminal justice system is to ensure that the trial must be fair. The Presiding Officer is supposed to treat the accused innocent till charge is proved against him but at the same time the guilty person should not be escaped from the punishment.

The word **“trial”** is not defined anywhere in the Criminal Procedure Code, however, it means an commonly understood the stage of trial began after framing the charge and end with the conviction or acquittal. The criminal procedure for judicial adjudications is divided in 37 chapter and classified in two schedules (i) the offences classified under I.P.C. and (ii) the offences classified other than I.P.C. The nature of trial are divided on the basis of seriousness of offences, its gravity and jurisdiction and on the basis of the gravity, seriousness of the offences the substantive law i.e. I.P.C. is divided into 37 parts by granting separate nomenclature particularly the nature of offences like the offence against State, human body, property, public tranquility, documents, marriage etc.

1} **Procedure in Sessions Trial-**

a) **Police case-225 to 237 Cr.P.C.**

Chapter XVIII of Cr.P.C. starting with Sec.225 and ending with section 237 deals with provisions governing the trial

before a Court of Session. Sec.225 Cr.P.C. enjoins that in every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor.

When the accused appears or is brought before court pursuant to the commitment of the case, the Public Prosecutor should open the case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

After considering the record of the case and the documents submitted along with such record and after hearing the submissions of the accused and the prosecution, if the judge considers that there are **no sufficient grounds** for proceeding against the accused, he shall discharge the accused giving reasons for doing so.

If, however, the judge is of the opinion that there is ground for presuming that the accused has committed the offence he may frame the charge against the accused in writing. At this stage the Sessions Judge is entitled to consider only the documents produced by the prosecution along with the charge sheet. The accused is not entitled to produce or cause production of any document at this stage for the consideration of the Sessions Judge. After framing the charge same shall be read over and explained to accused in vernacular manner. And then he shall be asked as to whether he pleads guilty of the offence charged or whether he claims to be tried for the charge.

If the judge is of opinion that the offence that is actually made out is not one exclusively triable by a court of Sessions then he shall frame a charge against the accused and

transfer the case for trial to the Chief Judicial Magistrate who shall try the case as if it were a warrant case instituted on a police report.

Section 229 of Cr.P.C. provides that if the accused pleads guilty the Judge **shall** record the plea and **may**, in his discretion, convict him thereon. Even though Sec.229 Cr.P.C. gives discretion to the judge to convict the accused, in case he pleads guilty, the charge in a sessions case being for grave offences, it is desirable that the accused is not straightaway convicted. The proper course would be to call upon the prosecution to prove its case by adducing evidence.

Where the accused does not plead guilty the court shall call upon the prosecution to adduce evidence in support of its case. After the conclusion of the prosecution evidence, the accused is to be examined under Sec.313 (1) (b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. After the examination of the accused the court has to post the case for hearing under Sec.232 Cr.P.C. if after hearing the prosecution and the defence the judge considers that there is no **evidence** to indicate that the accused committed the offence with which he is charged the judge can record an order of acquittal under Sec.232 Cr.P.C.

After hearing under Sec.232 if the accused is not acquitted thereunder, the accused shall be called upon to enter on his defence and to adduce any evidence which he might have in support thereof. After the conclusion of the defence evidence, if any, the case has to be taken up for arguments.

After hearing the arguments, the court has to pass the judgment in accordance with Secs.235 Cr.P.C. If the judgment is one of conviction and the judge does not proceed to invoke the beneficial provision of the Probation of Offenders Act, 1958, he shall hear the accused on the question of sentence and then pass a sentence in accordance with law.

b) Complaint case :S.190 to 210 of Cr.P.C.

Ch. XIV of Cr.P.C lays down provisions containing conditions required for initiation of proceedings and specially regarding cognizance of complaint case. Sec. 190 to 204 deals with 'cognizance' of cases and Sec. 190(1) lays that, Magistrate can take cognizance of offence

a)upon complaint;

b)upon police report; or

c)upon his own knowledge, or upon information received from any other person, other than a police officer.

Sec.193 Cr.P.C. provides that except as otherwise expressly provided by the Cr.P.C. or any other law, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under the Cr.P.C. except in special enactments.

SCOPE OF SEC. 200 AND 202:

Ch. XV of Cr.P.C. lays down the procedure which a Magistrate has to follow when a complaint is made to him. The very object of law is to give a person an access to justice other than upon police report. After above referred examination, question of issuance of summons comes in. Magistrate can either issue the summons or order inquiry under Sec. 202.

If evidence collected above is found insufficient

to take decision, Magistrate may either inquire himself or direct investigation by police officer under Sec. 202(1) of Code. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground to proceed further.

After receiving the report of investigation under Sec.202, the Court will consider whether there is sufficient ground to proceed. If there is no sufficient ground to proceed, the Court shall dismiss the complaint under Sec. 203. If there is sufficient ground to proceed, then the Magistrate will issue summons or warrant, as the case may be.

OPTIONS AVAILABLE :

Options which are available to the Magistrate after receipt of complaint could be summarized thus. Following five options are available to the Judicial Magistrate who is competent to take cognizance of the case.

- a. Rejection of the complaint,
- b. Order of investigation under Sec. 156(3),
- c. Taking cognizance of the offence ,
- d. Issuance of process ,
- e. Dismissal of the complaint.

Committal of case :

The provisions regarding committal of case are prescribed in Sec. 209 of Cr.P.C. and Para 9 to 12 of Chapter 3 of Criminal Manual. In all cases instituted on Police Reports or otherwise, whenever the accused appears or is brought before the Magistrate, and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall commit the case to the Court of Sessions, send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence and notify to the Public Prosecutor of the

commitment of the case to the Court of Sessions under Section 209 of the Code of Criminal Procedure, 1973.

Sec. 210 of Cr.P .C. provide the procedure to be followed when there is complaint case and police investigation in respect of the same offence and if Magistrate is satisfied that same are in respect of same offence he shall clubbed together both proceeding.

3} **Procedure in Warrant Trial**

There are two types of cases provided in Cr.P.C. i.e. Summons-cases and Warrant-case. Warrant-case case means a case relating to an offence punishable with death, or imprisonment for life, or imprisonment for a term exceeding two years while summons-cases means an case relating to an offence, and not being a warrant-case. Thus, the trials are normally divided into warrant trial and a summons trial. For trial of warrants cases by Magistrate two procedures are prescribed. One is adopted by Magistrate in cases instituted on police reports (Sections 238 to 243 Cr.P.C. and 248 to 250 of Cr.P.C.) and other is for cases instituted otherwise than police reports. (Sections 244 to 247 of Cr.P.C. and 248 to 250, 275 Cr.P.C.)

(a) Police case

Under Section 238 Cr.P.C. when in a warrant case, instituted on a police report, the accused appear or is brought before the Magistrate, the Magistrate has to satisfy himself that he has been supplied the all necessary documents submitted with charge-sheet.

Section 239 CrPC provides that if the Magistrate after

considering the charge-sheet filed u/s. 173 CrPC and hearing, considers the charge to be groundless, he would discharge the accused and record his reason for so doing. If, on examination of aforementioned documents, he comes to the prima facie conclusion that there is a ground for proceeding with the trail, he proceeds to frame the charge.

After framing a charge under Section 240 CrPC, the Magistrate has to proceed under Section 242 CrPC and under sub-section (3) of that Section the Magistrate is bound to proceed to take all such evidence as may be produced in support of the prosecution. This provision and the provisions in sub-section (1) and (2) of the Section 243, CrPC are mandatory.

The provisions of s. 243 apply equally to cases instituted on police report or on private complaint. After the examination and cross-examination of all prosecution witnesses, i.e. after the completion of the prosecution case the accused shall be called upon to enter upon his defence and any written statement put in shall be filed with the record.

(b) Private case :Section 244 to 250 of Code of Criminal Procedure are pertaining to cases instituted otherwise than on police report. Under section 244 of Cr. P. C when in any warrant case instituted otherwise than on a police report, the accused appears or is brought before the Magistrate, the Magistrate shall proceed to hear the prosecution and shall take all such evidence as may be produced in support of the prosecution.

After taking all evidence under section 244(1) of Cr. P.C the Magistrate reached at the conclusion that no case against accused has been made out, the Magistrate shall discharge accused

for the reasons recorded. If there is a strong suspicion about the commission of the offence and the involvement of accused the court shall proceed to frame charge instead of discharging the accused.

If the accused is not discharged under section 245 of Cr.P.C the Magistrate shall proceed to frame charge under section 246 of Cr. P. C. against the accused. Charge shall then be read and explained to the accused and then he has to be asked whether he pleads guilty or has any defence to make. If the accused refuses to plead or does not plead or claims to be tried he shall be required to state whether he wanted to cross examine any witnesses for the prosecution whose evidence has been taken. If the accused is ready to cross examine the witnesses, they shall be recalled for cross examination and re examination if any. The witnesses shall be discharged after cross-examination or re-examination. Under section 247 of Cr. P. C. the accused shall be called upon to enter upon his defence and to produce his defence if any.

Conclusion of Warrant trial (Common to Police case and otherwise Police Case) :

Section 248 : Acquittal or Conviction.

The section means that in a warrant case both instituted on police report and private complaint the only order that can be passed after charges is either a)acquittal or b)conviction.

Compensation for accusation without reasonable cause

As per section 250 of Cr. P. C. if in any case the accused is discharged or acquitted and the person upon whose complaint or information the accusation was made is present, the Magistrate **may** call upon him 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. If the complainant is absent then the summons may be issued to him to appear. Under section 250 [1] the accusation must be proved to have been made without reasonable cause. The provisions of section 250 of Cr. P. C. apply to summons cases as well as warrant cases.

Record in Warrant cases :As per section 275 of Cr.P.C. in all warrant cases tried before a Magistrate, the evidence of each witness shall be taken down in writing by either by Magistrate himself or by dictation in open court. Such evidence shall ordinarily be taken down in the form of a narrating by the Magistrate. The Magistrate may in his discretion taken down or cause to be taken any part of such evidence in the form of question and answer.

5) **Summon Trial:**

A summons case means a case relating to an offence not being a warrant case, implying all cases relating to offences punishable with imprisonment not exceeding two years. In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called “notice”, to the accused when the person appears in pursuance to the summons.

In view of Section 251 of Cr.P.C. the Magistrate is required to explain the particulars of the offence of which the accused is prosecuted. As per section 252 if the accused pleads guilty, the Magistrate shall record his plea as nearly as possible in the words used by the accused and may in his discretion, convict him thereon. Section 253 of Cr.P.C. is an exception to general rule which provides a simple procedure for disposing of petty cases without the presence of accused in court by post and messenger

also. By this provision discretion is given to the Magistrate to convict the accused. It also enables the pleader authorised by the accused to plead guilty on behalf of his client when offence is punishable only with fine. However, as per **Section 254** of Cr.P.C. if the accused is not convicted under Section 252 or 253 the court shall hear prosecution and take evidence lead by the prosecution and also hear the accused and take all such evidence as he produces in his defence. **Section 255** of Cr.P.C. deals with the acquittal or conviction. **Section 256** of Cr.P.C. deals with the circumstances of non appearance or death of the complainant. **Section 257** of Cr.P.C. deals with the withdrawal of complaint subject to the satisfaction of the Magistrate. Apparently this section applies to summons cases. **Section 258** of Cr.P.C. deals with the powers to stop proceeding in certain cases. **Section 259** of Cr.P.C. empowers the Magistrate to convert a summons case into warrant case (1) if the offence is punishable with imprisonment for more than six months, & (2) if he is of the opinion that it would be in the interest of justice try such case in accordance with the procedure for the trial of warrant cases.

Section 274 of Cr.P.C. deals with the record in summons cases and inquires. The Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of his evidence in the language of the Court. However, 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.

6} **Summary Trial (Section 260 to 265 and 326 (3) of Cri.P.C.)** :The object of summary trial is to disposal of cases speedily . Procedure prescribed for trial of summons-cases should be followed (S.262). There is no appeal in such a trial if a sentence of fine only not exceeding two hundred rupees has been awarded. There can be an application for revision to the High Court.

Procedure for Summary Trials :

The provisions of section 262 are imperative and a breach thereof amounts to an illegality and not an irregularity.

Judgment in cases Tried Summarily :

Section 264 lays down that in every case tried summarily the Magistrate must record the substance of the evidence and the judgment that is delivered must also contain a brief statement of the reason for coming in a particular finding.

Language of Record and Judgment :

Section 265 emphasizes that every such record i.e. the particulars mentioned in s. 263 and the substance of evidence and judgment must be recorded in the language of the Court.

Section 326(3): The provision of Section 326 (3), Cr.PC, bars the use of pre-recorded evidence by successor Judge only when the trial has to be conducted according to the provisions of Sections 262 and 265, Cr.P.C.(i.e. summary trial). When in a summary trial, the evidence has been recorded partly by one Magistrate who has taken notes of evidence and made them part of the record of the case and that Magistrate is succeeded by another Magistrate, the successor can decide the case on the evidence partly recorded by his predecessor and partly recorded by himself. It is not

required that in every case where the case is sent to another Magistrate, the evidence must be re-heard. It depends upon the particular case and the manner in which the evidence has been recorded.

In Shivaji Sampat Jagtap v. Rajan Hiralal Arora

2007 CriLJ 122, the Hon'ble Bombay High Court observed that, "The succeeding Magistrate, however, in a case, where the procedure contemplated under section 263 and 264 of the Code in particular has not been followed, he need not hold a trial de novo." and the view is upheld in **J.V.Baharuni ..Vs..State of Gujrat** 2015 ALL MR (Cri)357(SC).

7} **Common to all S. 272,273,277,278 to 290,302 to 319** :Chapter XXIII-A of Cr.P.C. provides mode of taking and recording evidence.

i] Section 272 :- As per notification dated 21st July 1998 of Govt. of Maharashtra, Marathi shall be the language of all Criminal Courts in the State subordinate to High Court.

ii] Section 273 makes it obligatory that evidence for the prosecution and defence should be taken in the presence of the accused. However, where personal attendance of accused is dispense with, evidence shall be taken in presence of his pleader (exception are S.205,206,299 & 317).

The recording of evidence by video conferencing is also permissible.**(The State of Maharashtra -Vs- Dr. Praful B. Desai & Anr., AIR 2003 SC 2053).**

iii] Section 281 deals with the mode of recording examination of the accused. The Metropolitan Magistrate is

required to make a memorandum of the substance of the examination of the accused and any other Magistrate or the Presiding Judge of the Sessions Court is required to record in full the whole of such examination including every question put to him and the answer given by him. Section 282 casts duty upon the interpreter to interpret truthfully.

Chapter XXIII-B of Cr.P.C. deals with commission for examination of the witnesses :- Sections 284 to 290 deals with examination of witnesses on commissions. In cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience, the Court could consider issuing a commission to record the evidence or by way of video-conferencing.

Section 291 allows the examination of a Civil Surgeon or any other Medical Witness taken and duly attested by a Magistrate, to be given in evidence in any inquiry, trial or other proceeding before a Court.

Section 291-A is being inserted with a view to making memorandum of identification prepared by the Magistrate admissible in evidence without formal proof of facts stated therein.

Section 292 deals with admissibility and use of any document purporting to be a report of the officers of the Mint without the examination in Court of the office concerned.

Section 293 deals with admissibility of report made by certain Government Scientific Experts as evidence. The Court may if it thinks fit, may also summon and examine any such expert about this report.

Section 294 provides the mode or manner in which the documents relied upon by the prosecution and defence can be

proved without any formal proof thereof. The proviso, however, gives discretion to the Court to call for the proof of the signature on the documents.

Section 296 provides of filing of an affidavit of a witness whose evidence is of a formal character. The object of this section is to achieve speedy disposal of the case.

Section 298 provides a special mode in which a previous acquittal or a previous conviction may be proved.

Section 299 deals with recording of evidence in absence of accused (1) where accused is absent and there is no immediate prospect of his arrest, and (2) where the offender is unknown. In the first case, the Court can record depositions of prosecution witnesses. These can be offered at the trial in three cases; (1) if the witness is dead; (2) if he is incapable of giving evidence; or (3) if his attendance would cause unreasonable delay, expense or inconvenience. Secondly, where the offender is unknown and the offence committed is punishable with death or imprisonment for life, the High Court or the Sessions Judge may direct a first class Magistrate to record prosecution evidence. Depositions so recorded may be used at the trial (1) if the witness is dead, or (2) is incapable of giving evidence, or (3) is beyond the limits of India. [Nirmal Singh Vs. State of Haryana](#), AIR 2000 SC 1416,

Chapter XXIV of Cr.P.C. deals with the general provisions as to inquiries and trials :-

i] Section 303 provides that any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of

his choice.

Section 304(Free legal aid) enables the Sessions Court to assign a pleader for the defence of the accused at the expense of the State provided he is unrepresented and the Court is satisfied that he has no sufficient means to engage a pleader. Provisions is made in Sub-sec.3 of sec.304 to extend the same facilities to any class of trials before other Courts by the State Government.

Section 305 lays down the procedure to be followed when a corporation or a registered Society is an accused.

Section 306(Tender of Pardon) deals with the subject of tender of pardon to an accomplice with a view to obtaining the evidence of him . It is applicable only when the offence is one which is (i) punishable with imprisonment of seven years or upwards; or (ii) triable exclusively by the Court of Session; or (iii) triable by a Special Judge under the Criminal Law Amendment Act, 1952. The pardon may be granted by the Chief Judicial Magistrate or the Metropolitan Magistrate; it can also be granted by any Magistrate of the first class inquiring into or trying the offence. Once a case has been committed, the power to grant pardon thereafter lies only with the Court to which the case has been committed. The person accepting the tender of pardon is required to be examined as witness in the Court and is to be detained in the custody until the conclusion of the trial unless he has been already released on bail.

Section 307 : The preceding section deals with tender of pardon by Magistrates. This section applies to tender of pardon by the Court of Sessions, the Special Judge or the Chief Judicial Magistrate. Pardon under this Section can be tendered not only

during a trial, but also before trial. Where pardon is granted by the Court to whom the case has been committed for trial, compliance with the provisions of a S.306(4) is not necessary.

Section 308 : Under this section a certificate of the Public Prosecutor is a condition precedent to the prosecution of an approve to whom a tender of pardon has been made but who has failed to comply with the conditions of the tender. The approver breaks the condition of pardon if he willfully conceals anything essential or gives false evidence. As per sub-section (2) where an approver has been tendered a pardon and he has accepted the tender, his statement recorded by a Magistrate u/s.164 or by a Court u/sub-s. (4) of s.306 will be admissible in evidence against him at a subsequent trial, after forfeiture of the pardon, for an offence in respect of which a pardon was so tendered.

Sub-sections (4) and (5) lay down that when a person to whom a pardon is tendered is being tried, he shall at the commencement of the proceedings be asked as to whether he raises a plea that he has complied with the conditions on which the pardon was granted, and, if he does so plead, the Court shall record its finding on the point and if it finds that the conditions have been complied with, shall acquit the accused.

Section 309 authorizes a Magistrate, after taking cognizance of the offence or commencement of trial, for reasonable cause, to remand an accused person to jail. It relates to adjournment of proceedings in inquiries and trials. [Thana Singh .Vs. Central Bureau of Narcotics](#), (2013)2 SCC 590.

Section 313 empowers the Court to examine the accused after the evidence for the prosecution has been taken. The

object of empowering the Court to examine the accused is to give him an opportunity of explaining any circumstances which may tend to incriminate him and thus to enable the Court, in case where the accused is undefended, to examine the witnesses in his interest.

In a summons case, discretion lies with the Magistrate, whether to dispense with the examination of the accused u/s 313 **(Basavraj R. Patil -Vs- State of Karnataka, (2000)8 SCC 740)**.

No oath can be administered to an accused person.

An accused person cannot be prosecuted for perjury by reason of any false answers that he may give.

Section 314 enables the parties to a proceeding to address oral arguments and written notes of argument.

Section 315 lays down that an accused person is a competent witness for the defence and like any other witness he is entitled to give evidence on oath in disproof of the case laid against him by prosecution.

Section 317 provides for enquiries and trials being held in the absence of the accused person in certain cases. It is only if the Judge or Magistrate is satisfied that (1) the personal attendance of the accused before him is not necessary in the interests of justice or (2) the accused persistently disturbs the proceedings, then where he is re-presented by a pleader, his personal attendance may be dispensed with.

Section 318 provides that if the accused (though not of unsound mind) cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of a Court other than a High Court if such proceedings result in a

conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Section 319 empowers the Court to proceed against any person not shown or mentioned as accused if it appears from evidence that such person has committed an offence for which he could be tried together with the main accused against whom an enquiry or trial is being held.

8) **Procedure in Special type of cases (POCSO,138 of NI Act Juvenile)**

PROCEDURE FOR TRIAL OF THE OFFENCES UNDER PREVENTION OF CHILD FROM SEXUAL OFFENCES ACT.

(Chapter -8 Section 33 laid down the procedure and power of Special Court)

1] It deals the procedure followed for session trial. A special court may take cognizance of any offence without the accused being committed to it for the trial upon receiving of the complaint of the facts which constitutes such offence or upon the police report.

2] Special public prosecutor is appointed and defence counsel while recording the evidence, examination-in-chief, cross-examination and reexamination is to be followed but the public prosecution cannot directly ask the question to the child witness but he has to form the question and communicate the same to presiding Officer i.e. special Court which shall in turn put up questions to the child.

3] Similar procedure is followed in respect of the defence counsel with further direction not to ask the question in aggravated form

which disturb the child.

4] Special court may permit frequent break to the child witness during the course of trial.

5] The special court shall create child friendly atmosphere by allowing parents, guardian on whom child has trust at the time of recording of his evidence.

6] The special court shall ensure that child shall not called repeatedly to testify and his evidence shall be completed within 30 days and case should be disposed of within one year.

7] The aggravated question which affect the character of the child and his dignity should not be allowed.

8] The identity of the child is not disclosed during the case of investigation or trial subject to the satisfaction of the court.

9] In appropriate cases, special court may direct the compensation to the child which suffering physical mental trauma because of sexual assault and immediate rehabilitation of the child. The special court take precaution that child is not exposed in any way to the accused at the time of recording of evidence but at the same time, accused must be entitled to hear the statement of child and also to communicate his advocate. The special court may also record the statement of child through video conferencing or by utilizing the single visibility result or curtain or any other devices.

10] The trial of child shall be conducted in camera and in the presence of parents or any other person in the child trust or confidence and if the child is not comfortable in court then his evidence shall be recorded any other place including chamber of the presiding officer.

11] If child is not in a position to understand the language then

he can simply help or assistance with interpreter for recording evidence and also seek the help of expert.

12] Unique feature is that provision of sec. 3 to 13 of the POSCO Act not applicable in case of medical examination or treatment when child examination or treatment is undertaken with consent of his guardian or parents or trustworthy person. The provisions of this Act that having overriding effects.

Juvenile : The JJB is bestowed with the powers of the Magistrate under Cr.P.C. Sec.4 (2) .The metropolitan Magistrate or JMFC is designated as a Principal Magistrate of JJB. All criminal cases of a Juvenile in conflict with law who has not completed 18 years of age are to be dealt with by JJB and not the regular courts.

Apprehension & Information to Parents guardian or probation officer.

As soon as the juvenile is arrested, the officer in charge of police station or the Special Juvenile Police Unit has to informed about the arrest to his parent or guardian and to the Probation officer of such arrest to enable him to obtained information regarding the antecedent and the family back ground of the juvenile etc. A child may be produced before an individual member of the board, when the board is not sitting (Sec.5 of J.J. Act 2000). The juvenile is to be produced before JJB within 24 hrs of his arrest. The juvenile should not be lodged in police lock-up or jail.

Production, Bail and Inquiry procedure Before JJB. :--When JICL produce before JJB, the board either release him on bail inailable or non-ailable offence (sec-12) or may send him to

observation home pending inquiry(sec-33). The inquiry before the board shall be completed within a period of four months from the date of its commencement. The period can be extended for special reason. If the juvenile is not released on bail the JJB should give short dates and in no case should the next date extend beyond 15 days of the previous date.

Ill-treatment to Juvenile:- On the first production of the juvenile, if the board found ill-treatment to the child, JJB can send the child for medical investigation and provide treatment. If the JJB board found ill-treatment, physical or sexual abused, then same be communicated to the District & Sessions Judge for further proceeding and the child be sent for trauma counseling.

Submission of charge-sheet:- On the charge sheet being filed, the JJB has to seek the report of probation officer or a social investigation report. The JJB is required to consider this report prior to passing any order with regard to rehabilitation of juvenile as per section 15(2) of J.J. Act.

Recording of Plea. :- While recording the plea of Juvenile, the juvenile is asked whether he has committed or not the offence, the sum and substances of accusation must be read over to him. If the juvenile admits to having committed the offence, the JJB has to pass appropriate order as prescribed u/s.15 of J.J.Act 2000. Even if the juvenile pleads guilty, the JJB will continue the inquiry after passing a reason order as to why chose not to accept the juvenile plea.

Recording of evidence:- When the juvenile pleads not guilty or his plea of guilt is not accepted by the JJB, the JJB has to record

the evidence by examining witnesses. While conducting an inquiry, JJB should follow the procedure laid down in Cr.P.C. pertaining trial of summons cases.

On the basis of evidence and arguments advanced, the JJB has to pass order u/s.15 of J.J.Act, 2000. The atmosphere during the inquiry should be child friendly and that too in presence of parents if any or any other person who is in near relations with the juvenile.

Procedure to be followed by the Magistrate not empowered under the Act. :- When any Magistrate not empowered to exercised powers of board, is of the opinion that a person brought before him is juvenile or child he shall without any delay record such opinion and shall forward him along with the record of proceeding to the competent authority having jurisdiction over the proceeding.

As per section 7 & 7A of J.J.Act, 2000, whenever, a claim of juvenile is raised before any court, is of the opinion that an accused person was a juvenile on the date of commission of an offence, the court shall make an inquiry, take such evidence as may be necessary to determine the age of such person and shall record findings to that effect. If the court finds a person to be juvenile on the date of commission of the offence, it shall forward the juvenile to the board for passing appropriate order.

The J.J.Board required to pass order u/s.15 of the said Act instead of sentencing him. In no case J.J. Board can pass sentence. There is no disqualification attached to conviction passed under section 15 of said Act (sec-19).

There is a bar of Joint proceeding of a juvenile and

person who is not a juvenile by virtue of sec- 18 of J.J.Act, 2000.

Appeal :- Any order passed by JGB under J.J.Act 2000 is challengeable before Sessions Court within 30 days of passing of said order.

Procedure for trial under section 138 of Negotiable

Instruments Act. :- **Jurisdiction** :-

A reading of section 138 in conjunction with s-177 Cr.P.C leaves no doubt that the return of the cheque by the drawee bank alone constitutes the commission of the offence and indicate the place where the offence is committed. therefore the place, sits or venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank, is located.

In Dashrath Rathod vs state of Maharashtra ,AIR 2014 SC 3519 it held that place of issuance or delivery of statutory notice or where complainant presents cheque for encashment was relevant for the purpose of territorial jurisdiction.

By virtue of Section 143 of N.I. Act which was inserted vide amendment Act, 2002 which empowered J.M.F.C. or M.M. to try cases summarily in accordance with the provisions of sections 262, 265 of Cr.P.C. But if the nature of offence of the case appears that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is for any other reasons undesirable to try the case summarily, the Magistrate after hearing a parties and record an order to that effect shall proceed to examine, rehear the case in the manner provided by the said Code by invoking provisions of Section 262 to 265 of Cr.P.C.

The trial of case required to be concluded within Six

months from the date of filing of complaint. On filing of complaint the matter must be kept for hearing and issuance of process. After issue process if the accused appeared bail should be granted to him and thereafter plea of accused should be recorded, when the accused plead not guilty, evidence on affidavit shall be taken by invoking of Section 145 of N.I.Act. After completion of evidence statement of accused u/s.313 came to be recorded, thereafter defence witness if any be examined on oath. Thereafter arguments and judgment.

In Indian Bank Association Vs. Union of India reported in 2014 Cri.L.J. 3119, Hon'ble Supreme Court issued following directions for speedy and expeditious disposal of cases under 138 of N.I Act.

- (1) M.M/J.M. on the day when the complaint is presented, shall scrutinize the complaint and if the complaint is accompanied by the affidavit and the documents and are found to be in order take cognizance and direct issuance of summons.
- (2) M.M./J.M. should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate following action be taken.
- (3) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made. Court may pass appropriate orders at the earliest.
- (4) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 of Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2)

for re-calling a witness for cross examination.

(5) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. The complainant and accused must be available for cross-examination as and when there is direction to this effect by the Court.

9} Procedures in offences affecting administration of Justice.(340 to 346,348,349 and 350)

Chapter 26 of Cr. P. C deals with the procedures relating to the offences affecting the administration of justice. These provisions specifically deal with offences of giving false evidence in the judicial proceedings as well as the proceedings before the court. The term court under section 195(4) of Cr. P.C. may be civil, criminal, revenue or Tribunal having empowered to record evidence. Sec 340 provides the procedure for offence enumerated in Sec. 195(1)(b).

The court can act on application made to it or suo motu. It may be moved by a person who is not party to the proceeding in relation to which the offence is committed.

The appeal against the order of Magistrate or court of session is provided under sec.341.

Sec. 344 provide the summary procedure to deal with the offences for giving or fabricating false evidence. Summary trial is provided in respect of commission of offences under section 193 to 196, 199,200, 205 to 211 and sec 228 of Indian Penal Code.

10} Framing of Charge S.211 to 224

(A)Framing of Charges and particulars :-

The very object of framing of charge is to accused person must know in precisely and concisely as possible of the matter with which he is charged. The charge contain particulars as to the time, place, of the alleged offences ,the person against whom or the thing in respect of which and in which manner offence was committed .

Effect of error :-

Section 215 of Cr.P.C., says that no error in stating either the offence or the particulars shall be regarded at any stage of the case as material , unless, the accused was in fact misled by such error or omission and it has occasioned a failure of justice.

Alteration of charge :-

As per section 216 of Cr.P.C. any court may alter or add to any charge at any time before judgment is pronounced. However, if court is of the opinion that because of addition or alteration of charge accused will be prejudice, Court may direct the new trial or adjourn the trial for such period as may be necessary. If after addition or alteration of charge, charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained. (**Jasvinder Saini and others..Vrs.. State** reported in **AIR 2014 SC 841**)

(B) Joinder of Charges :-

Section 218 to 224 deals with joinder of charges. Section 218 (1) of Cr.P.C.says that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately. However, on the application of the accused and if court is of the opinion that such person is not

likely to be prejudiced, magistrate may try together all or any number of charges framed against such person.

Three offences of same kind 219(1) within a space of 12 months .

Trial of more than one offence :- section 220 if, in one series of acts so connected together as to form the same transaction.

Where it is doubtful what offence has been committed:-

Section 219 and 221 are the exception to section 218. Cardinal principle of section 218 is that for every distinct offence there must be separate charge and such charge must be tried separately.

When offence proved included in the offence charged :-

When offence proved included in offence charged he may be convicted of the minor offence, though he was not charged with it

Joint trial of the persons more than one :-

Section 223 is deals with the joint trial of the persons more than one.

11} **Applications for discharge:**

Section 227, 239 and 245 Cri.P.C are dealt with discharge of accused. The Code contemplates discharge of the accused by the court of Session under section 227 in a case triable by it; cases instituted upon a police report are covered by section 239 and cases instituted otherwise than on police report are dealt with in section 245.

From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under section 227 of the Code, the trial court is required to discharge the accused if it “considers that there is not sufficient ground for proceeding against the accused”. However, discharge

under section 239 can be ordered when “the magistrate considers the charge against the accused to be groundless”. The power to discharge is exercisable under section 245(1) when, “ the magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if not repudiated, would warrants his conviction”. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under section 245, on the other hand, is reached only after the evidence referred in section 244 has been taken. Thus, there is difference in the language employed in these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused.

The word discharged is distinguishable from acquittal. The accused may be discharged if sufficient evidence is not there to proceed against him. Magistrate has to apply his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. The court is required to state reason for discharging the accused.

It is a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.(Sonu Gupta Vs. Deepak Gupta MANU/SC/0127/2015)

12} **Misc. provision regarding trial, adjournment, dismissals, recall of witness, Court witness, stop proceedings.**

Adjournment : Section 309 of the Cr.P.C. reflects the constitutional guarantee of speedy trial. Section **309** of Criminal Procedure Code 1973 confers power on the Trial Court for granting adjournment in criminal proceeding. There is a proviso to Sub-section (2) of Section **309** of Criminal Procedure Code which says that when the witnesses are in attendance, no adjournment or postponement shall be granted without examining them, except for special reasons to be recorded in writing. In the case of State of U.P. v. Shambhu Nath Singh and Ors., 2001 CriLJ 1740 the Supreme Court has specially dealt with in elaborate manner the power of the Trial Court for granting adjournments in criminal proceeding.

Proviso of S.309(1)& (2) mandate that the inquiry or trial relates to an offence under sections 376 to 376D of the Indian Penal Code(45 of 1860), as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses, no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party, the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment, if party/counsel are absent or is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Recently in a circulated judgment in the case of Vinod

Kumar Vs. State of Punjab¹ Hon'ble Apex Court observed that , “The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons”.

2} Dismissals (Sec.203, 249 & 256(1))

Section 203: Under Section 203 Magistrate may dismiss the complaint; if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, under Section 202 there is in his judgment "no sufficient ground for proceeding.

Section 249 of Cr.P.C : Under Section 249 of the Code of Criminal Procedure, the Magistrate is empowered to discharge the accused in the absence of the complainant, but he can do so only in case where the offence may be lawfully compounded or is not a cognizable offence. In no other case, the Magistrate empowered to discharge the accused.

Section 256(1) of Cr.P.C: In a summons case, instituted on a complaint, if the complainant is absent on the date of hearing, the Magistrate has to follow either of the three courses, namely; Acquit the accused; to adjourn the case and to dispense with the attendance of the complainant and to proceed with the case.

Restoration of a complaint : A second complaint is permissible in law if it could be brought within the limitations. However, the Criminal P.C. does not contain any provision enabling the criminal Court to revive its order and restore the complaint.¹

¹ Criminal Appeal No.554 of 2012

¹ Maj Genl. A. S. Gauraya v.[S. N. Thakur](#), 1986CriLJ1074

3) **Recall of witness : Section 311 of Cr.P.C.:** Discovery of the truth is the essential purpose of any trial or enquiry. Section 311 is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon anyone as a witness, or (b) to examine any person present in the court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. upon the court to arrive at the truth by all lawful means.[[Mohan Lal Shamlal Soni vs Union Of India And Another, AIR 1991 SC 1346 .\]](#)

4) **Court Witness (a witness called by Court):**

The object of the Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. The right to cross-examine a witness who is called by a Court arises not under the provision of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness.

5) **Stop proceeding:** Summons cases are generally of two categories; instituted upon complaints and otherwise than upon complaints. The latter category would include cases based on police reports. Section **258** of the Code is intended to cover those cases belonging to one category alone i.e. "summons cases instituted otherwise than upon complaints". The section permits the court to

acquit the accused prematurely only in those summons cases instituted otherwise than on complaints wherein the evidence of material witnesses was recorded. But the power of court to discharge an accused at midway stage is restricted to those cases instituted otherwise than on complaints wherein no material witness was examined at all.

Death of the complainant :

It is now well-settled that on the death of the complainant, under Section 256(2) Cr.P.C. cannot ipso facto bring about the termination of the criminal proceeding and in that case the Magistrate is authorised to exercise his power under Section 302 Cr.P.C. by allowing any person or prosecution agency for conducting of the criminal case merely on the death of the complainant, the complaint filed by him cannot be dismissed nor the accused acquitted or discharged under Section 256 or 258 Cr.P.C. [**Jimmy Jahangir Madan v. Bolly Cariyappa Hindley (Dead) by Lrs., MANU/SC/0946/2004 2004 (12) SCC 509**]

Submitted with due respect.

(O.P. Jaiswal)	(V.D. Shukla)	(S.S.Oza)
District Judge- 1	District Judge- 3	Jt.C.J.S.D., Amti.
Amti.	Amti.	

(L.S. Padhen)	(Ms.P.B. Yerlekar)
Jt.C.J.J.D.,	Jt. C.J.J.D.,
Amti.	Amti.

