

**DIAS TOOLS FOR JMFC & C.J.M.**

**1. NON-BAILABLE I.P.C. OFFENCES (Schedule-I)**

Ss. 115, 118, 119(II), 121 to 128, 130 to 134, 153A, AA & B, 170, 174A, 194, 195A, 222(I-II), 225(II-V), 227, 229A, 231 to 258, 267, 274, 295, 295A, 302 to 304, 304B, 305 to 308, 311, 313 to 316, 326, 326B, 327 to 329, 331, 332, 333, 353, 354, 354B, 354C(II), 354D(II), 355. 363A, 364 to 373, 376, 376A, 376C, 376D, 376E, 377, 379 to 384, 386, 387, 392 to 402, 406 to 414, 420, 436 to 439, 449, 450, 451(II), 452 to 461, 466 to 468, 476, 477, 489A, B & D, 493, 498A and 505).

**Exclusively Sessions Triable I.P.C. Offences (Schedule-I)**

Ss. 121 to 128, 130 to 132, 194, 195, 201, 211(II), 222(I), 225(V), 232, 234, 235(II), 236, 238, 240, 251, 255, 302, 303, 304, 304B, 305 to 308, 311, 313 to 316, 326A, 326B, 328, 329, 331, 333, 363A(II), 364, 364A, 366, 366A & B, 367, 370, 370A, 371 to 373, 376, 376A, 376B, 376C, 376D, 376E, 395 to 399, 400, 402, 412, 413, 436 to 438, 439, 449, 450, 459, 460, 489A to 489D, 500\* 501\* and 502\* -\*when the defamation is against President/other named dignitaries.

**Summary Triable I.P.C. Offences (S.260)**

135 to 140, 143 to 145, 147, 151, 153, 153AA, 154 to 158, 160, 163, 166, 166A, 161B, 168, 169, 170, 171, 171E, 171F, 171G, 171H, 171I, 172, 173, 174, 175 to 180, 182 to 190, 202 to 204, 206 to 211(I), 215, 217, 223 to 225A(b), 225B, 228, 229, 229A, 241, 254, 262, 263A, 264 to 267, 269 to 280, 282 to 292, 294, 294A, 295, 296, 297, 298, 304A, 309, 318, 323, 334, 336, 337, 338, 341 to 343, 345, 352, 353, 356 to 358, 374, 379\*, 380\*, 381\*, 385, 403, 411\*, 414\*, 417, 421 to 424, 426, 427, 428, 434, 447, 448, 451, 453, 454, 456, 461, 465, 482, 483, 486, 489, 489E, 490, 491, 498, 500, 501, 502, 504, 506(I) to 508, 510 \*when the stolen property is of not more than Rs.2,000.

**S.320: Compoundable I.P.C. Offences.**

(\* With permission): 298, 312\*, 323, 325\*, 334, 335, 337\*, 338\*, 341, 342, 343, 344, 346, 352, 355, 357\*, 358, 379,, 381\*, 403, 406\*, 407, 408\*, 411, 414, 417, 418\*, 419, 420\*, 421, 422, 423, 424, 426, 427, 428, 429, 430, 447, 448, 451 (other than theft), 482, 483, 486, 491, 494\*, 497, 498, 500\* (if against the dignitaries then permission needed), 501, 502, 504, 506, 508 and 509\* [When the same act is an offence under different sections/Act and one of them is non-compoundable, then compoundable is not permissible-Rameshchandra J. Thakkar Vs. Assandas Parmanand Jhaveri, AIR 1973 SC 84]

**S.320(8):** Acquittal of accused when offence is compounded.

**S.321:** Withdrawal of Prosecution by State: Discharge before charge & Acquittal after charge.

**Remand**

2. **S.41(1)** and 41A: Directions to police and Magistrates for release of accused arrested on unjustifiable grounds -Arnesh Kumar Vs. State of Bihar, AIR 2014 SC 2756

3. **S.57:** Special Order of Magistrate about custody of arrested prior to production before Magistrate.

4. **167(2):** Custody of accused beyond the 24 hours:

1.S.167(2): Magistrate has to look into facts before granting remand Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and ors., AIR 2013 SC 313

2.**S.167(2)** Magistrate has to judicially scrutinize circumstances and if satisfied order police custody Satyajit Ballulbhai Desai and Ors. Vs. State of Gujarat, (2015) CCR 321 (SC)

3.S.167(2) Absconding accused arrested after charge sheet can be remanded to PCR -Central Bureau of Investigation Vs. Rathin Dandapat and ors. AIR 2015 SC 3285

4. Further Production through VC for MCR is permissible. No police custody without physical production of accused.

5. Police custody not to exceed 15 days from the date of the first production -C.B.I. Vs. Anupam J. Kulkarni, AIR 1992 SC 1768.

**6. How to count when accused surrendered: S.167(1), Cr.P.C.**

presupposes that police already had custody of an accused and hence, voluntary surrender before another Magistrate is not the first date of production-State of WB Vs. Dinesh Dalmia, AIR 2007 SC 1801)

-Custody should not exceed 90 days in offences punishable with "not less than 10 years" and 60 days in other offences-Rajeev Chaudhary Vs. State (N.C.T.) of Delhi, AIR 2001 SC 2369.

-Before extending further custody beyond 60/90 days, the Magistrate should inform the accused about his right to bail and provide free legal aid counsel -Hussainara Khatoon and ors. Vs. Home Secretary, AIR 1979 SC 1377.

-If the accused had to be released under section 167(2)(a), Magistrate should call the explanation on affidavit, of the I.O. for not filing the final report and if it is unsatisfactory, the A.P.P. should refer to the superior police officer for disciplinary action -Bhulabai wd/o Barkaji Matre Vs. Shankar Barkaji Matre and others, 1999 (3) Mh.L.J. 227.

5. **S.169: Release by Police:** When the investigation could not be completed within 24 hours from arrest: (i) if there are grounds for believing that the accusation or information is well-founded, PSO shall forward the accused to such Magistrate (ii) if PSO finds no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate (i.e. u/s 167) such officer shall release him on bond.

\*Magistrate does not come in picture under S.169 -Mohd. Rafique Abdul Rahman Vs. State of Maharashtra, 2013 Bom.C.R. (Cri) 251.

\*S.169 Report is report of action taken by IO and not final report. Mere report without final report under S.173 is not tenable Maroti Vs. The State of Maharashtra and ors. 2015 (4) Bom.C.R. (Cri) 504

6. **S.167(5):** Magistrate to stop further investigation of summons case, if not completed in 6 months from date of arrest of the accused. But the already collected evidence may be used for charge-sheet.

**Bail**

7. **S.436:** Bail in bailable offences is rule Rasiklal Vs. Kisore Khanchand Wadhvani, AIR 2009 SC 1341

8. **S.167(2):** Right to bail is defeated if not availed already Mr. Uday Mohanlal Acharya Vs. State of Maharashtra, 2001 Cri.L.J. 4563

9. **S.167(2):** Application filed for default bail cannot be rejected due to filing of charge sheet before decision of bail application Union of India (UOI) Vs. Niralal Yadav AIR 2014 SC 3036

10. **S.167(2):** When Charge sheet is filed and Sanction awaited Hence no bail Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and Anr., (2013) 3 SCC 77

11. **S.436:** The accused in bailable offence bailed out by police need not apply to the Magistrate for fresh bail Monit Malhotra Vs. The State of Rajasthan, 1991 Cri.L.J. 806

12. **S.437:** Bail in Non-bailable offences. (When there is power to grant bail, power to grant Interim bail is inherent -Sukhwant Singh & Ors. Vs. State Of Punjab (2009) 7 SCC 559)

13. **S.437 Second Opinion** -When medical reason is a ground for bail the Magistrate can

call for detailed report from medical officer Dr. Raghunir Sharan Vs. The State of Bihar, AIR 1964 SC 1

14. **S.438:** Anticipatory bail.

15. **S.445** Pending surety verification, Magistrates has power to release accused on cash surety and thereafter asking him to furnish solvent sureties Mr. Sajal Kumar Mitra and Ors. Vs. The State of Maharashtra, 2011 Cri.L.J. 2744

**Investigation**

1. **S.155(2):** Magistrate's order to police to investigate N.C. offence.

2. **S.156(3):** Magistrate's direction (Without recording the verification-Mohd. Yousof Vs. Smt. Afaq Jahan and anr. ,AIR 2006 SC 705) to the Officer-in-charge of police station to investigate cognizable offence.

**\*S.156(3)** Application should be supported by affidavit Mrs Priyanka Srivastava & Anr. Vs. State of UP & Ors. 2015 (96) SCC 287

\*Magistrate has discretion to reject S.156(3) prayer and to direct for S.200 verification -Sachin Vs. The State of Maharashtra, 2014 ALL.M.R. (Cri)1833.

**S.156(3) and 200** Cognizance means not mere applying mind but for the purpose of proceeding under S.200 and its subsequent provisions Nirmaljit Singh Hoon Vs. The State of West Bengal, AIR 1972 SC 2639

\*After S.156(3) order, original complaint/application and order be retained on record and certified/attested copies be sent to the police.

\*If Cr.M.A./Cri. Case is disposed off after S.156(3) order as the matter would come again under section 173(2) of the Cr.P.C., direction be given to tag the R & P with the final report whenever filed.

\*Magistrate cannot direct C.B.I. (C.B.I.S.P., Jaipur Vs. State of Rajasthan & anr., AIR 2001 SC 668) or C.I.D. -State Of Maharashtra Vs. Ibrahim A. Patel , 2008 CriLJ 1496 (Bom)(DB).

\*After investigation Police to submit charge sheet before "the court competent to take cognizance" -Satvinder Kaur Vs. State (1999) 8 SCC 728

3. **S.173:** Final report i.e. Charge sheet or Final Summaries A, B, C or Abated to be filed on completion of investigation. (Rule 203 of the Bombay Police Manual, Volume III Summaries A B and C explained State Vs. Shankar Bhaurao Khirode, AIR 1959 Bom 437)

\*Criminal Complaint by Court/Magistrate under Sec.340 or 341 is deemed to be a case on Police Report in view of Sec.343]

4. **S.173(8):** Magistrate has jurisdiction to direct further investigation Chandra Babu Vs State and ors. (2015) 8 SCC 774.

5. **S.164:** Magistrate to record the confession of the accused and statement of witness before commencement of inquiry or trial.

-Obtain signature of accused on the confession-S.281 Cr.P.C. & Chapter-1, Cr. Manual.

-Statement of witness be recorded as per chapter-23, Cr.P.C. (Witness need not sign the statement.)

**S.468(2): Limitation For Taking Cognizance**

1. (i): 6 months if the offence is punishable with fine.

(ii): 1 year if punishable with imprisonment up to one year.

(iii): 3 years if punishable with imprisonment exceeding 1 year but not exceeding 3 years. (For 3 & more years No limit)

**Cognizance & Process**

**S.190(1)(a):** Cognizance of offence upon complaint

**S.190(1)(b):** Cognizance upon Police Report.

\*Magistrate can proceed against accused not charge sheeted Rajinder Prasad vs. Bashir and ors. AIR 2001 SC 3524

\*Trial is not vitiated if the cognizance is valid H.N. Rishbud and Inder Singh Vs. The State of Delhi AIR 1955 SC 196

**\*S.190** Notice to informant is necessary if cognizance is not taken Chittaranjan Mirdha Vs. Dulal Ghosh and anr. (2009) 6 SCC 661

**S.190(1)(c):** Cognizance on other than police report or upon Magistrate's own knowledge.

**S.190:** Magistrate can take cognizance against other accused on subsequent date also Vijay Kant Thakur and Anr. Vs. State of Bihar and anr. 2010 Cri.L.J. 4190.

**S.191:** Transfer of case at the instance of the accused in case of S.190(1)(c), Cr.P.C.

**S.195(1):** Bar to take cognizance of certain offences except on the complaint by competent Public Servant.

**S.197:** No cognizance against public servants and judges without prior sanction.[See: AIR1956SC44 & AIR1998SC1524 =Whether sanction is necessary or not may depend from stage to stage]]

**S.200:** Examination of complainant and witnesses present and obtain their signatures.

**S.201(a):** Return of complaint for presentation before proper court.

**S.202:** Police investigation order: \* Unless S.156(3) is invoked, first examine the complainant and the witnesses present. [AIR 1980 SC 1780 Kewal Kishan Vs. Surajbhan = Sessions triable offence do not order police investigation u/s. 202].

**S.204(1)(a):** Process of summons in summons case.

**S.204(1)(b):** Process of summons or warrant in warrant case.

No restoration of dismissed complaint by Magistrate -AIR 1986 SC 1440

**S.210: Procedure in case of a complaint case and simultaneous police investigation.** If Police already started investigation stop the Inquiry/trial of the complaint till completion of investigation. If charge sheet is filed and cognizance is taken try together both the cases as if it were a case on police report. If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial

\*Magistrate shall issue notice to the complainant before issuing "B" Final to police.

#### **Special Summons**

S.206: Special summons in petty offences i.e. .pun. with fine not more than Rs.1,000.[Similar:S.208 M.V.Act and 151A of Bom.Police Act etc ]

S.253: Conviction on pleading guilty in special summons.

#### **S.209: Committal of case to Sessions Court**

\*S.209 Without obtaining the forensic report committal by Magistrate is mechanical and without applying mind Chhotan Sao and anr Vs. State of Bihar AIR 2014 SC 907

\*Supply copies U/s 207 (police case) and 208 (in complaint case) to the accused.

\*When the accused is unrepresented inform him his right to have a counsel at the expenses of Govt. and mention it in committal order.

\*When the accused is in custody remand him to jail till the trial is over (Limit of 15 days u/s 167 is not applicable here). Issue Committal Warrant (Form III Chapter XXXIII Cri. Manual) instead of earlier Remand warrant. Advisable to mention date on Remand warrant for production of the accused before the sessions court to avoid languishing indefinitely.

\*When the accused is present on bail give him date to appear before the court of sessions.

\*Send the R & P and Property to Sessions court.

\*Notify the committal to the P.P. (Use Form No.31).

**S.193:** On committal, Sessions Court gets jurisdiction to take cognizance against new accused on same material Kishun Singh and ors. Vs. State of Bihar (1993) 2 SCC 16

#### **Chapter XIX -Trial of Warrant Cases**

##### **A: In State Cases (On Police Report)**

**S.239:** Magistrate can Discharge Accused, if the charge is groundless.

**\*S.227 and 239** Material produced by accused not to be considered (Satish Mehra (1996) 9 SCC 766 Overruled)-State Of Orissa vs Debendra Nath Padhi A.I.R. 2005 SCC 369

**S.241:** Conviction on Pleading guilty.

##### **B: In Other Than Police Report**

**S.244:** Evidence Before Charge in warrant cases on complaint.

**S.245(2):** Discharge of Accused in Warrant-case when the charge is groundless.

**S.249:** Discharge of accused before charge in warrant cases on complaint if the Complainant remains absent on the day fixed for hearing and when the offences are Non-cognizable or compoundable.

##### **C: In State & Private Cases**

**S.248(1):** Acquittal on conclusion of Trial

**S.248(2):** Conviction on conclusion of Trial.

##### **Chapter XX -Trial in Summons Case**

**S.251:** State Substance of Accusation and record plea.

**S.252:** Conviction on pleading guilty.

**S.255(1):** Acquittal on Conclusion of Trial

**S.255(2):** Conviction on Conclusion of Trial.

**S.255(2) and Prohibition Act S.66(1)(b)** Hearing on sentence gives accused to show special reason for less than minimum punishment Jethalal Girdharlal Vs. State of Gujarat (1984) 2 GLR 964

**S.256:** When, on the day fixed for appearance of accused or subsequent date complaint remains absent, Complaint case may be dismissed and the accused stands acquitted.

**S.257:** When complaint is withdrawn, the accused stands acquitted.

**S.258:** In Summons-cases on Police Report, JMFC/CJM can stop proceeding in certain cases.

##### **Chapter XXI-Summary Trials**

**S.260:** Magistrate having summary powers can proceed under Chapter XXI. Otherwise Proceed under Chapter XX in summons cases & Chapter XIX in warrant cases. (Offences under certain Acts ex. Bombay Prohibition Act, Food Adulteration Act, Forest Act etc. N.I. Act may be tried summarily when the Act provides to try them summarily notwithstanding the summary powers given in Cr.P.C.).

**S.262:** In Summary Trial except under special enactments imprisonment cannot exceed 3 months.

**S.259:** In offences punishable with more than 6 months imprisonment, Court can try a summons case as a warrant case.

##### **General -Inquiry & Trial**

**S.231:** Additional witness for prosecution can be allowed State of Bombay Vs. Mohamadh Khan, AIR 1960 Bom 150.

**S.235(2)** To hear on sentence de novo trial not necessary Narpal Singh & Others Vs State Of Haryana AIR 1977 SC 1066

**S.235(2)** Accused upon conviction can be sent to jail until hearing on sentence Ram Deo Chauhan Vs. State of Assam (2001)5SCC714

**S.296:** What is formal evidence which can be taken on affidavit is explained State of Punjab Vs. Naib Din AIR2001SC3955

**S.299 and 193:** After committal Sessions Judge has jurisdiction to summon accused named in column no.2 Constitution Bench Dharam Pal and Ors. Vs. State of Haryana and Anr. 2014(3)SCC 306

**S.299:** Unless common evidence is recorded the evidence against the tried accused cannot be read against absconding accused Smt. Urmila Sahu Vs. State of Orissa 1998CriLJ1372 Orissa

**S.300:** & P.C. Act S.19 Fresh trial not barred when the Court had no jurisdiction to take cognizance

due to invalid sanction State of Karnataka through CBI Vs. C. Nagarajswamy, AIR 2005 SC 4308

**S.307** is invocable at post-commitment while S.306 is invocable at pre-commitment stage Narayan Chetanram Chaudhary and Anr.Vs. State of Maharashtra, AIR 2000 SC 3352

S.313: Accused be informed that he can decline to give answers and his inculpatory statements may be taken into consideration Laxman alias Laxmayya Vs.The State of Maharashtra 2012 Cri.L.J. 2826

**S.319:** Larger Bench explained-A person discharged can be arraigned again as accused after an inquiry as contemplated by Section 300(5) and 398 (5JJs) Hardeep Singh etc. Vs.State of Punjab and Ors. AIR 2014 SC 1400.

**S.436:** When the accused furnished bail bonds before the police officer in bailable offence, for his appearance before the Court, fresh bail is not to be asked for-Mani Malhotra Vs. State of Rajasthan, 1991 Cr.L.J.806

**S.437(6):** Compulsory bail of accused in case the trial by Magistrate is not concluded in 6months from the date of commencement.

**S.437A:** Bail at the conclusion of Every Trial.

**S.446:** Forfeiture of Bonds and Penalty.

**S.446A:** Accused cannot be released on mere P.R. Bond if he breached bail bond.

**S.344:** Sum. Procedure for false evidence.

**S.345:** Cases of Contempt U/s. 175, 178, 179, 180, 228: Before rising of the court, the court may take cognizance of the offence and after show cause opportunity, sentence to fine up to Rs.200/- I.D. S.I. for 1month.

##### **Conviction of Accused**

**In Warrant Case:** Hear the Accused on the question of sentence, if probation benefit is not given to him.

\* **Chapter XI of Cr. Manual:** Call the Report of Dist. Probation Officer u/s.4 of Prob. of Off. Act.

\*S.361: (S.6 of P.O. Act): Mandatory to give "Special Reasons" reasons for not giving benefit of probation- Eliamma and Anr. Vs. State of Karnataka (2009) 11 SCC42

P.O. Act S.6 Age as on date of conviction and not of offence to be considered for probation -(4Judges) Ramji Missir and Anr.Vs.The State of Bihar AIR1963SC1088

**S.363:** Mandatory to furnish free copy to accused if sentence of imprisonment is awarded.

**S.389(3):** Bail by Trial Court to the person sentenced to imprisonment of not more than 3 years. It is deemed suspension of sentence:

##### **Exemption & Separation of Trial**

**S.205:** Exemption of personal appearance of accused while issuing summons in summons case.

**S.317:** Exemption of personal appearance of accused during trial and separation of trial of absent accused.

**S.294:** Notice to admit documents.

**S.350:** Non-Attendance of witness on summons Rs.100 fine.

**S.428: Set off of** period undergone from attest till release.

**S.421:** Recovery of fine

**S.431:** Recovery of other than Fine.

**S.357** (S.5 of P.O. Act) : Compensation to the victim

**S.309:** Day-to-day trial, adjournments and Recording Evidence in absence of accused in certain situation.

##### **Property Disposal**

**S.451:** Disposal of property produced before Court pending trial.

**S.457:** Disposal of property Not-Produced before Court pending trial.

\*S.457 is not applicable in view of S.50 of Wild Life Act State of U.P. and anr. Vs. Laloo Singh, (2007) 7 SCC 334

**S.452:** Final disposal of property.