

**CHAPTER XIX**  
**OF THE CHARGE**

*Form of Charges*

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| Charge to state offence                         | <b>221.</b> (1) Every charge under this Code shall state the offence with which the accused is charged.   |
| Specific name of offence sufficient description | (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.  |
| How stated where offence has no specific name   | (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.  |
|   | (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.   |
| What implied in charge                          | (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.  |
| Language of charge                              | (6) The charge shall be written either in English or in the language of the Court.  |
| Previous conviction when to be set out          | (7) If the accused having been previously convicted of any offence is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it at any time before sentence is passed. |

*Illustrations*

- (a) A is charged with the murder of B. This equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisions to that exception apply to it.

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

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

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

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

Particulars as to time, place and person

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

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

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

When manner of committing offence must be stated

#### *Illustrations*

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

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

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

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

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

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

Words in charge taken in sense of law under which offence is punishable

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

Effect of errors

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

#### *Illustrations*

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

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

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

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

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

**226.** [Omitted by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978), section 2 and Schedule.]

**227.** (1) Any Court may alter or add to any charge at any time before judgment is pronounced <sup>1</sup>[\* \* \*]. Court may alter charge

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

**228.** If the charge framed or alteration or addition made under <sup>2</sup>[\* \* \*] section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made proceed with the trial as if the new or altered charged had been the original charge. When trial may proceed immediately after alteration

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<sup>1</sup> The commas and words ", or, in the case of trials before the Court of Session or High Court Division, before the verdict of the jury is returned or the opinions of the assessors are expressed" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words and figure "section 226 or" omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

When new trial may be directed, or trial suspended

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

Stay of proceedings if prosecution of offence in altered charge require previous sanction

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

Re-call of witnesses when charge altered

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

Effect of material error

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

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

#### *Illustration*

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

*Joinder of Charges*

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

Separate charges for distinct offences

*Illustration*

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

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

Three offences of same kind within year may be charged together

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Penal Code or of any special <sup>1</sup>[\* \* \*] law:

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

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

Trial for more than one offence

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<sup>1</sup> The words "or local" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act 1973, (Act No. VIII of 1973).

Offence falling within two definitions

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

Act constituting one offence, but constituting when combined a different offence

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by anyone, or more, of such acts.

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

#### *Illustrations*

*to sub-section (1)–*

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

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

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

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

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

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

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

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

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

*to sub-section (2)–*

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

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

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

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

*to sub-section (3)–*

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

Where it is doubtful what offence has been committed

**236.** If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

*Illustrations*

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

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

When a person is charged with one offence, he can be convicted of another

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

*Illustration*

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

When offence proved included in offence charged

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

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

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

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

*Illustrations*

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

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

**239.** The following persons may be charged and tried together, namely:-

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;
- (c) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last named offence;

What persons may be charged jointly

- (f) persons accused of any offence under sections 411 and 414 of the Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and
- (g) persons accused of any offence under Chapter XII of the Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence;

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

Withdrawal of remaining charges on conviction on one of several charges

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

## CHAPTER XX

### OF THE TRIAL OF <sup>1</sup>[CASES] BY MAGISTRATES

Procedure in cases

**241.** The following procedure shall be observed by Magistrates in the trial of <sup>2</sup>[cases].

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<sup>1</sup> The word "CASES" was substituted for the words "SUMMONS-CASES" by section 14 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> The word "cases" was substituted for the words "summons-cases" by section 15 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>1</sup>[**241A.** When the accused appears or is brought before the Magistrate, and if the Magistrate, upon consideration of the record of the case and the documents submitted therewith and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, considers the charge to be groundless, he shall discharge the accused and record his reasons for so doing.]

When accused shall be discharged

<sup>2</sup>[**242.** <sup>3</sup>[If, after such consideration and hearing as aforesaid, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, the Magistrate shall frame a formal charge] relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged.]

Charge to be framed

**243.** If the accused admits that he has committed the offence <sup>4</sup>[with which he is charged], his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

Conviction on admission of truth of accusation

**244.**(1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence:

Procedure when no such admission is made

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<sup>1</sup> Section 241A was inserted by section 7 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>2</sup> Section 242 was substituted for the former section 242 by section 16 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>3</sup> The words and commas "If, after such consideration and hearing as aforesaid, the Magistrate is of opinion that there is ground for presuming that the accused has committed as offence, the Magistrate shall frame a formal charge" were substituted for the words and comma "When the accused appears or is brought before the Magistrate, a formal charge shall be framed" by section 8 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>4</sup> The words "with which he is charged" were substituted for the words "of which he is accused" by section 17 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

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

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

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

Acquittal

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

Sentence

(2) Where the Magistrate does not proceed in accordance with the provisions of section 349 or <sup>1</sup>[\*\*\*], he shall, if he finds the accused guilty, pass sentence upon him according to law.

**246.** [Omitted by the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982), section 18.]

Non-  
appearance of  
complainant

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

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

Withdrawal of  
complaint

**248.** 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 the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

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<sup>1</sup> The words and figure "section 562" were omitted by section 69 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

**249.** In any case instituted otherwise than upon complaint, <sup>1</sup>[a Metropolitan Magistrate], a Magistrate of the first class, or with the previous sanction of the <sup>2</sup>[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 either of acquittal or conviction, and may thereupon release the accused.

Power to stop proceedings when no complainant

<sup>3</sup>[*Frivolous Accusations in Cases tried by Magistrates*]

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

False, frivolous vexatious accusations

(2) The Magistrate shall record and consider any cause which such complainant or information may show and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding <sup>4</sup>[one thousand Taka] or, if the Magistrate is a Magistrate of the third Class, not exceeding <sup>5</sup>[five hundred Taka], as he may determine be paid by such complainant or informant to the accused or to each or any of them.

<sup>1</sup> The letter and words "a Metropolitan Magistrate" were inserted by section 2 and Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>2</sup> The words and comma "Chief Judicial Magistrate, any other Judicial Magistrate" were substituted for the words and comma "District Magistrate, any other Magistrate" by section 70 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>3</sup> The sub-heading was substituted for the former sub-heading by section 19 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>4</sup> The words "one thousand taka" were substituted for the words "one hundred taka" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>5</sup> The words "five hundred taka" were substituted for the words "fifty taka" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

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

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

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

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

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding <sup>1</sup>[one hundred taka] may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

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

<sup>2</sup>[(5) Notwithstanding anything contained in this section, the Magistrate may, in addition to the order directing payment of the

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<sup>1</sup> The words "one hundred taka" were substituted for the words "fifty taka" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> Sub-section (5) was added by section 20 of the Code of Criminal Procedure (Second Amendment) Ordinance, (Ordinance No. XXIV of 1982).

compensation under sub-section (2), further order that the person ordered to pay such compensation shall also suffer imprisonment for a period not exceeding six months or pay a fine not exceeding three thousand Taka.]

**CHAPTER XXI.-(Section 251-259)** [Omitted by the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982), section 21.]

## CHAPTER XXII

### OF SUMMARY TRIALS

**260.** (1) Notwithstanding anything contained in this Code,-

Power to try  
summarily

- <sup>1</sup>[(a) the Metropolitan Magistrate <sup>2</sup>[\*\*\*],]
- (b) <sup>3</sup>[any <sup>4</sup>[\*\*\*] Magistrate] of the first class <sup>5</sup>[\*\*\*], and
- (c) any Bench of Magistrates invested with the powers of a Magistrate of the first class <sup>6</sup>[\*\*\*],

<sup>7</sup>[shall] try in a summary way all or any of the following offences:-

- (a) offences not punishable with death, transportation or imprisonment for a term exceeding <sup>8</sup>[two years];

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<sup>1</sup> Clause (a) was substituted for clause (a) by section 2 of the Code of Criminal Procedure (Amendment) Act, 1980 (Act No. IV of 1980).

<sup>2</sup> The words "or the District Magistrate" were omitted by section 71(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>3</sup> The words "any Metropolitan Magistrate or Magistrate" were substituted for the words "any Magistrate" by section 2 and Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>4</sup> The words "Metropolitan Magistrate or" were omitted by section 2 of the Code of Criminal Procedure (Amendment) Act, 1980 (Act No. IV of 1980).

<sup>5</sup> The words "specially empowered in this behalf by the Government" were omitted by section 71(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>6</sup> The words "and specially empowered in this behalf by the Government" were omitted by section 71(c) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>7</sup> The word "shall" was substituted for the words and commas "may, if he or they think fit," by section 22 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>8</sup> The words "two years" were substituted for the words "one year" by section 22 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

- (b) offences relating to weights and measures under sections 264, 265 and 266 of the Penal Code;
- (c) hurt, under section 323 of the same Code;
- (d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed <sup>1</sup>[ten thousand taka];
- (e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed <sup>1</sup>[ten thousand taka];
- (f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed <sup>1</sup>[ten thousand taka];
- (g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed <sup>1</sup>[ten thousand taka];
- (h) mischief, under <sup>2</sup>[sections 426 and 427] of the same Code;
- (i) <sup>3</sup>[criminal trespass, under section 447, and] house trespass, under section 448, and offences under sections 451, 453, 454, 456 and 457 or the same Code;
- (j) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, <sup>4</sup>[and offences under sections 509 and 510] of the same Code;
- <sup>5</sup>[(jj) offence of bribery and personation at an election under sections 171E and 171F of the same Code;]
- (k) abetment of any of the foregoing offences;
- (l) an attempt to commit any of the foregoing offences, when

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<sup>1</sup> The words "ten thousand taka" were substituted for the words "five hundred taka" by section 9 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>2</sup> The words and figures "section 426 and 427" were substituted for the word and figure "section 427" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The words, figure and commas "criminal trespass, under section 447, and" were inserted before the words "house-trespass" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The words and figure "and offences under sections 509 and 510" were inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>5</sup> Sub-clause (jj) was substituted for sub-clause (jj) by section 2 of the Code of Criminal Procedure (Amendment) Act, 1992 (Act No. III of 1992).

such attempt is an offence;

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

Provided that no case in which a Magistrate exercises the special powers conferred by section <sup>1</sup>[33A] shall be tried in a summary way.

(2) [Omitted by the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982), section 22.]

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

Power to invest Bench of Magistrates invested with less power

- (a) offences against the Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, 447 and 504;
- (b) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine;
- (c) abatement of any of the foregoing offences;
- (d) an attempt to commit any of the foregoing offences, when such attempt is an offence.

**262.** (1) In trials under this Chapter, the procedure prescribed <sup>2</sup>[in <sup>4</sup>[Procedure for Chapter XX] shall be followed <sup>3</sup>[\* \* \*] except as hereinafter <sup>4</sup>summary trials] mentioned.

<sup>1</sup> The figure "33A" was substituted for the figure "34" by section 22 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> The words and figure "in Chapter XX" were substituted for the words "or summons-cases" by section 23 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>3</sup> The words and commas "in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases," were omitted by section 2, Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The marginal heading was substituted for the former marginal heading by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Limit of imprisonment (2) No sentence of imprisonment for a term exceeding <sup>1</sup>[two years] shall be passed in the case of any conviction under this Chapter.

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

- (a) the serial number;
- (b) the date of the commission of the offence;
- (c) the date of the report or complaint;
- (d) the name of the complainant ( if any);
- (e) the name, parentage and residence of the accused;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e), clause (f) or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed;
- (g) the plea of the accused and his examination (if any);
- (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;
- (i) the sentence or other final order; and
- (j) the date on which the proceedings terminated.

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

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

Language of **265.** (1) Records made under section 263 and judgments

<sup>1</sup> The words "two years" were substituted for the words "three months" by section 23 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> The words and figure "and memorandum of the substance of the evidence as required by section 355" were inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately sub-ordinate so directs, in such officer's mother-tongue.

record and judgment

(2) The Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

Bench may be authorized to employ clerk

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

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

### <sup>1</sup>[CHAPTER XXIII

#### OF TRIALS BEFORE COURTS OF SESSION

**265A.** In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

Trial to be conducted by Public Prosecutor

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

Opening case for prosecution

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

Discharge

**265D.** (1) If, after such consideration and hearing as

Framing charge

<sup>1</sup> The CHAPTER XXIII was substituted for CHAPTER XXIII by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

aforesaid, the Court is of opinion that there is ground for presuming that the accused has committed an offence, it shall frame in writing a charge against the accused.

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

Conviction on  
plea of guilty

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

Date for  
prosecution  
evidence

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

Evidence of  
prosecution

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

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

Acquittal

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

Entering upon  
defence

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

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

(3) If the accused applies for the issue of any process for

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

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

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

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

(2) [*Omitted by the Code of Criminal Procedure (Second Amendment) Ordinance, 1983 (Ordinance No. XXXVII of 1983), section 3.*]

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

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

[*Sections 266 to 336 have been omitted by the Law Reforms Ordinance, 1978 (Ord. No. XLIX of 1978)*]

## CHAPTER XXIV

## GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

Tender of  
pardon to  
accomplice

**337.** (1) In the case of any offence triable exclusively by the <sup>1</sup>[\*\*\*] Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under section 211 of the Penal Code, with imprisonment which may extend to seven years, or any offence under any of the following sections of the Penal Code, namely, sections 216A, 369, 401, 435 and 477A, <sup>2</sup>[a Metropolitan Magistrate] or any Magistrate of the first class may, at any state of the investigation or inquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof:

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the <sup>3</sup>[Chief Judicial Magistrate shall] exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the <sup>4</sup>[Chief Judicial Magistrate] has been obtained to the exercise thereof.

(1A) Every Magistrate who tenders a pardon under sub-section (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record:

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

<sup>1</sup> The words "High Court Division or" were omitted section 2 and Schedule of by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "a Metropolitan Magistrate" were substituted for the words and commas "the District Magistrate, a Metropolitan Magistrate, a Sub-divisional Magistrate" by section 72(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>3</sup> The words "Chief Judicial Magistrate shall" were substituted for the words "District Magistrate shall" by section 72(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>4</sup> The words "Chief Judicial Magistrate" were substituted for the words "District Magistrate" by section 72(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

(2) Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

(2A) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, <sup>1</sup>[send] him for trial to the Court of Session <sup>2</sup>[\* \* \*].

(3) Such persons, unless he is already on bail, shall be detained in custody until the termination of the trial.

**338.** At any time <sup>3</sup>[before the judgment is passed, the Court of Session trying the case] may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any such offence, tender, or order <sup>4</sup>[\* \* \*] <sup>5</sup>[or the Chief Metropolitan Magistrate or the Chief Judicial Magistrate] to tender, a pardon on the same condition to such person. Power to direct tender of pardon

**339.** (1) Where a pardon has been tendered under section 337 or section 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made such <sup>6</sup>[Trial] of person to whom pardon has been tendered

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<sup>1</sup> The word "send" was substituted for the word "commit" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words and comma "or High Court Division, as the case may be" were omitted, by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The words and comma "before the judgment is passed, the Court of Session trying the case" were substituted for the words and comma "after commitment, but before judgment is passed, the Court to which the commitment is made" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The words "the committing Magistrate or" were omitted, by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>5</sup> The words "or the Chief Metropolitan Magistrate or the Chief Judicial Magistrate" were substituted for the words "or the District Magistrate" by section 73 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>6</sup> In the marginal heading the word "Trial" was substituted for the word "Commitment" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter:

Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made; in which case it shall be for the prosecution to prove that such conditions have not been complied with.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court Division.

Procedure in  
trial of person  
under section  
339

<sup>1</sup>[339A. (1) The Court trying under section 339 a person who has accepted a tender of pardon shall

- (a) if the Court is <sup>2</sup>[\* \* \*] Court of Session before the charge is read out and explained to the accused under <sup>3</sup>[section 265D, sub-section (2)], and
- (b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and <sup>4</sup>[\* \* \*] shall, before judgment is passed in the case find whether or not the accused has complied with the conditions of the pardon and if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.]

<sup>1</sup> Section 339A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>2</sup> The words "High Court Division or" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The words, figures, comma and brackets" section 265D, sub-section (2)" were substituted for the words, comma and brackets "section 271, sub-section (1)" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The words and commas "the jury, or the Court with the aid of assessors, or the Magistrate, as the case may be," were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>1</sup>[**339B.** <sup>2</sup>[(1) Where after the compliance with the requirements of section 87 and section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect of arresting him, the Court taking cognizance of the offence complained of shall, by order <sup>3</sup>[published in at least two national daily Bengali Newspapers having wide circulation], direct such person to appear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.]

Trial in  
absentia

(2) Where in a case after the production or appearance of an accused before the Court or his release on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply and the Court competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence.

**339C.** (1) A Magistrate shall conclude the trial of a case within <sup>4</sup>[one hundred and eighty days] from the date on which the case is <sup>5</sup>[received by him] for trial.

Time for  
disposal of  
cases

(2) A Sessions Judge, an Additional Sessions Judge or an Assistant Sessions Judge shall conclude the trial of a case within <sup>6</sup>[three hundred and sixty days] from the date on which the case is received by him for trial.

<sup>1</sup> Sections 339B and 339C were inserted by section 24 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> Sub-section (1) was substituted for sub-section (1) by section 10 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>3</sup> The words "published in at least two national daily Bengali Newspapers having wide circulation" were substituted for the words and comma "notified in the *official Gazette*, and also published in at least one Bengali daily Newspaper" by section 6 of the Code of Criminal Procedure (Amendment) Act, 1991 (Act No. XVI of 1991).

<sup>4</sup> The words "one hundred and eighty days" were substituted for the words "one hundred and twenty days" by section 3 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).

<sup>5</sup> The words "received by him" were substituted for the words and comma "taken cognizance of, or received by him" by section 11 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>6</sup> The words "three hundred and sixty days" were substituted for the words "two hundred and forty days" by section 3 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).

<sup>1</sup>[(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where a person is accused in several cases and such cases are brought for trial before a Magistrate or a Court of Session, the time limit specified in sub-section (1) or sub-section (2) for the trial of such cases shall run consecutively.]

<sup>2</sup>[(2B) Notwithstanding the transfer of a case from one Court to another Court, the time specified in sub-section (1) or sub-section (2) shall be the time for concluding the trial of a case.]

(3) [*Omitted by the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992), section 3.*]

<sup>3</sup>[(4) If a trial cannot be concluded within the specified time, the accused in the case, if he is accused of a non-bailable offence, may be released on bail to the satisfaction of the Court, unless for reasons to be recorded in writing, the Court otherwise directs.]

<sup>4</sup>[(5) Nothing in this section shall apply to the trial of a case under section 400 or 401 of the Penal Code (Act XLV of 1860), or to the trial of a case to which the provisions of Chapter XXXIV apply.]

<sup>5</sup>[(6) In this section, in determining the time for the purpose of a trial,—

<sup>6</sup>[\* \* \*]

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<sup>1</sup> Sub-section (2A) was inserted by section 11 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>2</sup> Sub-section (2B) was inserted by section 7 of the Code of Criminal Procedure (Amendment) Act, 1991 (Act No. XVI of 1991).

<sup>3</sup> Sub-section (4) was substituted for the former sub-section (4) by section 3 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).

<sup>4</sup> Sub-section (5) was substituted for the former sub-section (5) by section 2 of the Code of Criminal Procedure (Amendment) Ordinance, 1985 (Ordinance No. XXIX of 1985).

<sup>5</sup> Sub-section (6) was substituted for the former sub-section (6) by section 7 of the Code of Criminal Procedure (Amendment) Act, 1991 (Act No. XVI of 1991).

<sup>6</sup> Clause (a) was omitted by section 7 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).

- (b) the days spent on account of the absconsion of an accused after his release on bail, if any, shall not be counted.]]

**339D.** [Omitted by the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992), section 4.]

**340.** (1) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

Right of person against whom proceedings are instituted to be defended and his competency to be a witness

(2) Any person against whom proceedings are instituted in any such Court under section 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings.

<sup>1</sup>[(3) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

- (a) he shall not be called as a witness except on his own request in writing; or
- (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any persons charged together with him at the same trial.]

**341.** If the accused, though not insane, 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 High Court Division, if such <sup>2</sup>[proceedings result] in a conviction, the proceedings shall be forwarded to the High Court Division with a report of the circumstances of the case, and the High Court Division shall pass thereon such order as it thinks fit.

Procedure where accused does not understand proceedings

<sup>1</sup> Sub-section (3) was added by section 2 and Schedule of the Law Reform Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "proceedings result" were substituted for the words and comma "inquiry result in a commitment, or if such trial results" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Power to  
examine the  
accused

**342.** (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court <sup>1</sup>[\* \* \*] may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath shall be administered to the accused.

No influence to  
be used to  
induce  
disclosures

**343.** Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Power to  
postpone or  
adjourn  
proceedings

**344.** (1) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Remand

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by a Court other than High Court Division shall be in writing signed by the presiding Judge or Magistrate.

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<sup>1</sup> The words and brackets "and the jury (if any)" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

**Explanation**– If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Reasonable  
cause for  
remand

**345.** (1) The offences punishable under the sections of the Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:–

Compounding  
offences

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt .... ..	323,334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass	447	The person in possession of the property trespassed upon.
House-trespass	448	
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Defamation	500	The person defamed.
Printing or engraving matter, knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

(2) The offences punishable under the sections of the Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table—

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
<sup>1</sup> [Rioting.	147	The person against whom force or violence has been used.
Rioting armed with deadly weapon.	148	Ditto.]
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	Ditto.

<sup>1</sup> Sections 147 and 148 and the entries relating thereto were inserted by section 25 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	The person to whom hurt is caused.
<sup>1</sup> [Act endangering human life or the personal safety of others.	336	Ditto.]
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more	343	The person confined.
<sup>2</sup> [Wrongfully confining for ten or more days.	344	Ditto.]
Wrongfully confining a person in secret.	346	Ditto.
<sup>1</sup> [Wrongfully confinement to extort property or constrain to illegal act.	347	The person wrongfully confined.
Wrongful confinement to extort confession or compel restoration of property.	348	Ditto.]
<sup>3</sup> [Assault or criminal force to women with intent to outrage her modesty.	354	The women assaulted or to whom the criminal force was used.]
<sup>4</sup> [Assault or criminal force in attempt to commit theft of property worn or carried by a person.	356	The person assaulted or to whom criminal force is used.]

<sup>1</sup> Sections 336, 347 and 348 and the entries relating thereto were inserted by section 25 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> Section 344 and the entries relating thereto were inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> Section 354 and the entries relating thereto were inserted by Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> Section 356 and the entries relating thereto were inserted by section 2 and Schedule of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
<sup>1</sup> [Theft <sup>2</sup> [* * *].	379	The owner of the property stolen.]
<sup>3</sup> [Theft in dwelling house.	380	Ditto.]
<sup>1</sup> [Theft by clerk or servant of property in possession of master <sup>2</sup> [* * *].	381	Ditto.]
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
<sup>1</sup> [Criminal breach of trust <sup>4</sup> [***].	406	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a carrier, wharfinger, etc. <sup>4</sup> [***].	407	Ditto.
Criminal breach of trust by a clerk or servant <sup>4</sup> [***].	408	Ditto.
Dishonestly receiving stolen property, knowing it to be stolen <sup>4</sup> [* * *].	411	The owner of the property stolen.
Assisting in the concealment or disposal of stolen property, knowing it to be stolen <sup>5</sup> [* * *].	414	Ditto.]

<sup>1</sup> Sections 379, 381, 406, 407, 408, 411 and 414 and the entries relating thereto were inserted by Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The comma and the words ", where the value of the property stolen does not exceed taka five hundred" were omitted by section 12 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>3</sup> Section 380 and the entries relating thereto were inserted by section 2 and Schedule of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>4</sup> The comma and the words ", where the value of the property does not exceed taka five thousand" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>5</sup> The comma and the words ", where the value of the stolen property does not exceed taka five hundred" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

Offence.	Sections of the Penal Code applicable.	Persons by whom offence may be compounded.
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	Ditto.
Cheating by personation	419	Ditto.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
<sup>1</sup> [Fraudulent removal or concealment of property, etc. to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.
Mischief by killing or maiming animal <sup>2</sup> [* * *].	428	The owner of the animal.
Mischief by killing or maiming cattle, etc. <sup>3</sup> [* * *].	429	The owner of the cattle, or animal.]

<sup>1</sup> Sections 421, 422, 423, 424, 428 and 429 and the entries relating thereto were inserted by Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "of the value or taka ten or upwards" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>3</sup> The comma and words ", of any value or any other animal of the value of taka fifty or upwards" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person is possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	Ditto.
<sup>1</sup> [Cohabitation caused by a man deceitfully including a belief of lawful marriage.]	493	The woman with whom cohabitation was caused.]
Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.
<sup>2</sup> [Attempting to commit offences punishable with transportation or imprisonment.]	511	The person against whom such attempt was made for committing the offence.]

<sup>1</sup> Section 493 and the entries relating thereto was inserted by section 25 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> Section 511 and the entries relating thereto was added by section 25 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

(3) When any offence is compoundable under this section, the abatement of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may with the permission of the Court compound such offence.

(5) When the accused has been <sup>1</sup>[sent] for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is <sup>1</sup>[sent] or, as the case may be, before which the appeal is to be heard.

(5A) The High Court Division acting in the exercise of its powers of revision under section 439 <sup>2</sup>[, and a Court of Session so acting under section 439A,] may allow any person to compound any offence which he is competent to compound under this section.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(7) No offence shall be compounded except as provided by this section.

**346.** (1) If, in the course of an inquiry or a trial before a <sup>3</sup>[Chief Judicial Magistrate] in any district <sup>4</sup>[\* \* \*], the evidence appears to him to warrant a presumption that the case is one which should be tried or <sup>1</sup>[sent] for trial by some other <sup>3</sup>[Chief Judicial Magistrate] in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any <sup>3</sup>[Chief Judicial Magistrate] to whom he is subordinate or to such other <sup>3</sup>[Chief Judicial Magistrate], having jurisdiction, as the District Magistrate directs.

Procedure of <sup>5</sup>[\* \* \*] Magistrate in cases which he cannot dispose of

<sup>1</sup> The word "sent" was substituted for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The commas, words, letter and figure ", and a Court of Session so acting under section 439A," were inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The words "Chief Judicial Magistrate" were substituted for the word "Magistrate" by section 74 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>4</sup> The words "outside the presidency-towns" repealed by the Federal Laws (Revision and Declaration) Act, 1951 (Act. No. XXVI of 1951), section 3 and schedule II.

<sup>5</sup> The word "Provincial" in the marginal heading was omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or <sup>1</sup>[send] the accused for trial.

Procedure when higher punishment should be inflicted on accused

<sup>2</sup>[347. Notwithstanding anything contained in this Code, whenever a Magistrate of the first class is of opinion, after recording the evidence for the prosecution, that if the accused or, where more accused than one are being tried together, any of such accused is convicted he should receive a punishment more severe than that which such Magistrate is empowered to inflict, he may record his opinion and submit his proceedings, and forward the accused, or all the accused, to the Court of Session to which he is subordinate, whereupon the Court of Session shall try the case as if the case were exclusively triable by it under this Code.]

Trial of persons previously convicted of offences against coinage, stamp-law or property

**348.** (1) Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Penal Code, with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for <sup>3</sup>[sending] the accused be <sup>4</sup>[sent] to the Court of Session or <sup>5</sup>[\*\*\*] unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted :

Provided that, if any Magistrate in the district has been invested with powers under section 29C, the case may be transferred to him instead of being <sup>4</sup>[sent] to the Court of Session.

<sup>1</sup> The word "send" was substituted for the word "commit" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> Section 347 was substituted for section 347 by section 5 of the Code of Criminal Procedure (Second Amendment) Act, 1980 (Act No. XXX of 1980).

<sup>3</sup> The word "sending" was substituted for the word "committing" by section 2 and Schedule of the Law Reform Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The word "sent" was substituted for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>5</sup> The words and comma "or High Court Division, as the case may be" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(2) When any person is <sup>1</sup>[sent] to the Court of Session <sup>2</sup>[\*\*\*] under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly <sup>1</sup>[sent] unless the Magistrate discharges such other person under <sup>3</sup>[section 241A].

**349.**(1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the <sup>4</sup>[Chief Judicial Magistrate or a Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate ] to whom he is subordinate.

Procedure  
when  
Magistrate  
cannot pass  
sentence  
sufficiently  
severe

(1A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the <sup>5</sup>[Chief Judicial Magistrate or a Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate].

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such

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<sup>1</sup> The word "sent" was substituted for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "or High Court Division" were omitted, by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The word, figure and letter "section 241A" were substituted for the words, figures, letters and comma "section 250B or section 250H, as the case may be" by section 13 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>4</sup> The words "Chief Judicial Magistrate or a Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate" were substituted for the words "District Magistrate or Sub-divisional Magistrate" by section 75(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>5</sup> The words "Chief Judicial Magistrate or a Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate" were substituted for the words "District Magistrate or Sub-divisional Magistrate" by section 75(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

judgment, sentence or order in the case as he thinks fit, and as is according to law :

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Conviction on evidence partly recorded by one Sessions Judge, etc., and partly by another

<sup>1</sup>[349A. (1) Whenever any Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, after having heard and recorded the whole or any part of the evidence in a trial, ceases to exercise jurisdiction therein, and is succeeded by another Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, as the case may be, who has and who exercises such jurisdiction, the Judge so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the trial:

Provided that if the succeeding Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, as the case may be, is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one Court of Session to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1).]

Conviction <sup>2</sup>[\*\*\*] on evidence partly recorded by one Magistrate and partly by another

**350.** (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the inquiry or trial:

<sup>1</sup> Section 349A was inserted by section 14 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>2</sup> The words "or commitment" in the marginal heading were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>1</sup>[Provided that if the succeeding Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.]

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346 or in which proceedings have been submitted to a superior Magistrate under section 349.

(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1).

<sup>2</sup>[**350A.** No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under <sup>3</sup>[section 15 and 16 or, as the case may be, section 19 and 21], and the Magistrates constituting the same have been present on the Bench throughout the proceedings.]

Changes in  
constitution of  
Benches

**351.** (1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

Detention of  
offenders  
attending Court

(2) When the detention takes place <sup>4</sup>[\* \* \*] after a trial has been begun the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

<sup>1</sup> The proviso was substituted for the original proviso by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> Section 350A was inserted by section 94 of the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>3</sup> The words, figures and commas "section 15 and 16 or, as the case may be, section 19 and 21" were substituted for the words and figures "sections 15 and 16" by section 76 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>4</sup> The words and figure "in the course of an inquiry under Chapter XVIII or" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Courts to be open

**352.** The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

## CHAPTER XXV

### OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

Evidence to be taken in presence of accused.

**353.** Except as otherwise expressly provided, all evidence taken under Chapters <sup>1</sup>[\* \* \*] XX, <sup>2</sup>[\* \* \*] XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Manner of recording evidence

**354.** In inquiries and trials (other than summary trials) under this Code by or before a Magistrate or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Record <sup>3</sup>[\*\*\*] in trials of certain offences by first and second class Magistrates

**355.** (1) <sup>4</sup>[In cases tried under Chapter XX or Chapter XXII] by a Magistrate of the first or second class and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

<sup>1</sup> The figure and comma "XVIII," were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The figure and comma "XXI," were omitted by section 26 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>3</sup> The words "in summons-cases and" in the marginal heading were omitted by section 27 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>4</sup> The words and figures "In cases tried under Chapter XX or Chapter XXII" were substituted for the words, figures, brackets, letters and commas "In summons-cases tried before a Magistrate and in the cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive, when tried" by section 27 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

**356.** (1) In all other trials before Courts of Session and Magistrates and in all inquiries under <sup>1</sup>[Chapter XII] the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge. Record in other cases

(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record. Evidence given in English

(2A) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take it down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record.

(3) In cases in which the evidence is not taken down in writing by the Magistrate or Session Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record. Memorandum when evidence not taken down by the Magistrate or Judge himself

(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

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<sup>1</sup> The word and figure "Chapter XII" were substituted for the words and figures "Chapters XII and XVIII" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Language of record of evidence

**357.** (1) The Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so and shall cause the evidence to be taken down in writing from his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language or in the language of the Court, although such language is not his mother-tongue.

Option to Magistrate in cases under section 355

**358.** In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Government has made the order referred to in section 357, in the manner provided in the same section.

Mode of recording evidence under section 356 or section 357

**359.** (1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate or Sessions Judge may, in his discretion take down, or cause to be taken down, any particular question and answer.

Procedure in regard to such evidence when completed

**360.** (1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

**361.** (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

Interpretation of evidence to accused or his pleader

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

**362.** [Omitted by the Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]

**363.** When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Remarks respecting demeanour of witness

**364.** (1) Whenever the accused is examined by any Magistrate, or by any Court other than High Court Division the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English: and such record shall be shown or read to him, 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.

Examination of accused how recorded

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge 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.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

Record of  
evidence in  
High Court  
Division

**365.** <sup>1</sup>[The Supreme Court] shall from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the evidence shall be taken down in accordance with such rule.

#### CHAPTER XXVI

#### OF THE JUDGMENT

Mode of  
delivering  
judgment

**366.** (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained—

- (a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and
- (b) in the language of the Court, or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

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<sup>1</sup> The words "The Supreme Court" were substituted for the words "Every High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

**367.** (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or from the dictation of such presiding officer in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him.

Language of  
judgment.  
Contents of  
judgment

(2) It shall specify the offence (if any) of which, and the section of the Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

(3) When the conviction is under the Penal Code and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

Judgment in  
alternative

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

<sup>1</sup>[(5) If the accused is convicted of an offence punishable with death or, in the alternative, with transportation for life or imprisonment for a term of years, the Court shall in its judgment state the reasons for the sentence awarded.]

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<sup>1</sup> Sub-section (5) was substituted for sub-section (5) by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(6) For the purposes of this section, an order under section 118 or section 123, sub-section (3), shall be deemed to be a judgment.

Sentence of death

**368.** (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of transportation

(2) No sentence of transportation shall specify the place to which the person sentenced is to be transported.

Court not to alter Judgment

**369.** Save as otherwise provided by this Code or by any other law for the time being in force <sup>1</sup>[\* \* \*], no Court when it has signed its judgment, shall alter or review the same, except to correct a clerical error.

**370.** [Omitted by the Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]

Copy of judgment, etc., to be given to accused on application

**371.** (1) On the application of the accused a copy of the judgment, or when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a <sup>2</sup>[case under Chapter XX], be given free of cost.

(2) [Omitted by the Law Reforms Ordinances 1978 (Ordinance No. XLIX of 1978), section 2 and Schedule.]

Case of person sentenced to death

(3) When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Judgment when to be translated

**372.** The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

<sup>1</sup> The words and commas "or, in the case of the High Court Division, by the Letters Patent of such High Court Division" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words and figure "case under Chapter XX" were substituted for the word "summons-case" by section 28 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

**373.** In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the <sup>1</sup>[Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, and District Magistrate] within the local limits of whose jurisdiction the trial was held.

Court of Session to send copy of finding and sentence to District Magistrate

#### CHAPTER XXVII

##### OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION

**374.** When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court Division and the sentence shall not be executed unless it is confirmed by the High Court Division.

Sentence of death to be submitted by Court of Session

**375.** (1) If when such proceedings, are submitted the High Court Division thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

Power to direct further inquiry to be made or additional evidence to be taken

<sup>2</sup>[(2) Unless the High Court Division otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.]

(3) When the inquiry and the evidence (if any) are not made and taken by the High Court Division, the result of such inquiry and the evidence shall be certified to such Court.

**376.** In any case submitted under section 374, <sup>3</sup>[\* \* \*] the High Court Division—

Power of High Court Division to confirm sentence or annul conviction

- (a) may confirm the sentence, or pass any other sentence warranted by law, or
- (b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or
- (c) may acquit the accused person:

<sup>1</sup> The words and commas "Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, and District Magistrate" were substituted for the words "District Magistrate" by section 77 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>2</sup> Sub-section (2) was substituted for sub-section (2) by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The words and comma "whether tried with the aid of assessors or by jury," were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Confirmation of new sentence to be signed by two Judges

**377.** In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court Division, shall, when such Court consists of two or more judges, be made, passed and signed by at least two of them.

Procedure in case of difference of opinion

**378.** When any such case is heard before a bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court Division for confirmation.

**379.** In cases submitted by the Court of Session to the High Court Division for the confirmation of a sentence of death, the proper officer of the High Court Division shall, without delay, after the order of confirmation or other order has been made by the High Court Division, send a copy of the order, under the seal of the High Court Division and attested with his official signature, to the Court of Session.

**380.** [*Repealed by section 16 of the Probation of Offenders Ordinance, 1960 (Ordinance No. XLV of 1960).*]

## CHAPTER XXVIII

### OF EXECUTION

Execution of order passed under section 376

**381.** When a sentence of death passed by a Court of Session is submitted to the High Court Division for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court Division thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Postponement of capital sentence on pregnant woman

**382.** If a woman sentenced to death is found to be pregnant, the High Court Division shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to transportation for life.

**383.** Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be, confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Execution of sentence of transportation or imprisonment in other cases

**384.** Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Direction of warrant for execution

**385.** When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant with whom to be lodged

**386.** (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

Warrant for levy of fine

- (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;
- (b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(2) The Government may make rules regulating the manner in which warrants under sub-section (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Courts issue a warrant to the Collector under sub-section (1), Clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the Decree, and all the provisions of that Code as to execution of decrees shall apply accordingly:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

Effect of such  
warrant

**387.** A warrant issued under section 386, sub-section (1), clause (a), by any Court may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the attachment and sale of any such property without such limits, when endorsed by the District Magistrate <sup>1</sup>[or Chief Metropolitan Magistrate] within the local limits of whose jurisdiction such property is found.

Suspension of  
execution of  
sentence of  
imprisonment

**388.** (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

- (a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and
- (b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

<sup>1</sup> The words "or Chief Metropolitan Magistrate" were inserted by section 2 and Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

**389.** Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.

Who may issue warrant

**390.** When the accused is sentenced to whipping only, the sentence shall subject to the provisions of section 391 be executed at such place and time as the Court may direct.

Execution of sentence of whipping only

**391.** (1) When the accused—

- (a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or
- (b) is sentenced to whipping in addition to imprisonment,

Execution of sentence of whipping, in addition to imprisonment

the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal is made within that time, until the sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment when the term of imprisonment to which he is sentenced is less than three months.

**392.** (1) In the case of a person of or over sixteen years of age whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode and on such part of the person, and with such instruments, as the Government directs.

Mode of inflicting punishment

Limit of number of stripes

(2) In no case shall such punishment exceed thirty stripes and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes.

Not to be executed by instalments  
Exemptions

**393.** No sentence of whipping shall be executed by instalments: and none of the following persons shall be punishable with whipping, namely:—

- (a) females;
- (b) males sentence to death or to <sup>1</sup>[transportation], or to imprisonment for more than five years;
- (c) males whom the Court considers to be more than forty-five years of age.

Whipping not to be inflicted if offender not in fit state of health

**394.** (1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Stay of execution

(2) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Procedure if punishment cannot be inflicted under section 394

**395.** (1) In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, or to a fine not exceeding five hundred Taka, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(2) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term or a fine of an amount exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

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<sup>1</sup> The word "transportation" construed as a reference to "imprisonment for life" by section 3 of the Penal Code (Amendment) Ordinance, 1985, (Ordinance No. XLI of 1985).

**396.** (1) When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, or transportation, shall take effect according to the following rules, that is to say—

Execution of sentences on escaped convicts

(2) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

**Explanation**—For the purposes of this section—

- (a) a sentence of transportation shall be deemed severer than a sentence of imprisonment;
- (b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and
- (c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

**397.** When a person already undergoing a sentence of imprisonment, or transportation, is sentenced to imprisonment, or transportation, such imprisonment, or transportation shall commence at the expiration of the imprisonment, or transportation to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Sentence on offender already sentenced for another offence

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced:

Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

Saving as to sections 396 and 397

**398.** (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, or transportation, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

Confinement of youthful offenders in reformatories

**399.** (1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) [*Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule*].

Return of warrant on execution of sentence

**400.** When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

**CHAPTER XXIX****OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES**

**401.** (1) When any person has been sentenced to punishment for an offence, the Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Power to suspend or remit sentences

(2) Whenever an application is made to the Government for the suspension or remission of a sentence, the Government, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Government not fulfilled, the Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4A) The provision of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or impose any liability upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of the President <sup>1</sup>[\* \* \*] to grant pardons, reprieves, respites or remissions of punishment.

(5A) Where a conditional pardon is granted by the President <sup>2</sup>[\* \* \*], any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

Power to  
commute  
punishment

**402.** (1) The Government may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:—

death, transportation, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Penal Code.

Sentences of  
death

<sup>3</sup>[**402A.** The powers conferred by sections 401 and 402 upon the Government may, in the case of sentences of death, also be exercised by the President.]

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<sup>1</sup> The words "or of the Central Government when such right is delegated to it" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The words and commas "or, in virtue of any power delegated to it, by the Central Government" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> Section 402A was inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

**CHAPTER XXX**

## OF PREVIOUS ACQUITTALS OR CONVICTIONS

**403.** (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

Person once convicted or acquitted not to be tried for same offence

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, or section 188 of this Code.

**Explanation**— The dismissal of a complaint, the stopping of proceedings under section 249, <sup>1</sup>[or the discharge of the accused] is not an acquittal for the purposes of this section.

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<sup>1</sup> The words "or the discharge of the accused" were substituted for the commas, words and figure ", the discharge of the accused or any entry made upon a charge under section 273," by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

*Illustrations*

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A is charged by a Magistrate of the first class with, and convicted by him of voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(f) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for dacoity on the same facts.

**PART VII****OF APPEAL, REFERENCE AND REVISION****CHAPTER XXXI****OF APPEALS**

Unless otherwise provided, no appeal to lie

**404.** No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Appeal from order rejecting application for restoration of attached property

**405.** Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

**406.** Any person who has been ordered by a Magistrate under section 118 to give security for keeping the peace or for good behaviour may appeal against such order

to the Court of Session:

<sup>1</sup>[\*\*\*]

Provided, <sup>2</sup>[\*\*\*], that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123.

Appeal from order requiring security for keeping the peace or for good behaviour

<sup>3</sup>[**406A.** Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,-

- <sup>4</sup>(a) if made by the Chief Metropolitan Magistrate <sup>5</sup>[or the Chief Judicial Magistrate] or a District Magistrate, to the Court of Session;
- (b) if made by a Metropolitan Magistrate other than the Chief Metropolitan Magistrate, to the Chief Metropolitan Magistrate; or
- (c) if made by any other Magistrate, <sup>6</sup>[whether Executive or Judicial,] to the District Magistrate<sup>7</sup>[\*\*\*]<sup>8</sup>[or the Chief Judicial Magistrate.]

Appeal from order refusing to accept or rejecting a surety

<sup>1</sup> The first proviso was omitted by section 78(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>2</sup> The word "further" was omitted by section 78(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>3</sup> Section 406A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>4</sup> Clauses (a), (b) and (c) were substituted for clauses (b) and (c) by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>5</sup> The words "or the Chief Judicial Magistrate" were inserted by section 79(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>6</sup> The words and comma "whether Executive or Judicial," were inserted by section 79(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>7</sup> The full stop "." after the words "District Magistrate" were omitted by section 79(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>8</sup> The words and full stop "or the Chief Judicial Magistrate." were inserted by section 79(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

Appeal from sentence of Magistrate of the second or third class

<sup>1</sup>[**407.** Any person convicted on a trial held by any Magistrate of the second or third class may appeal to the Chief Judicial Magistrate who may himself hear and dispose of the appeal or transfer it to any Additional Chief Judicial Magistrate for disposal, and may withdraw an appeal so transferred.

Appeals from sentence of Joint Sessions Judge and Magistrates of the first class

**408.** Any person convicted on a trial held by a Joint Sessions Judge, Metropolitan Magistrate or any Judicial Magistrate of the first class, may appeal to the Sessions Judge:

Provided as Follows :-

- (a) When in any case a Joint Sessions Judge passes any sentence of imprisonment for a term exceeding five years, the appeal of all or any of the convicted persons shall lie to the High Court Division;
- (b) When any person is convicted by a Metropolitan Magistrate or Judicial Magistrate specially empowered to try an offence under section 124A of the Penal Code, the appeal shall lie to the High Court Division.]

Appeals to Court of Session how heard

**409.** An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:

Provided that an Additional Sessions Judge shall hear only such appeals as the Government may by general or special order, direct or as the Sessions Judge of the Division may make over to him.

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<sup>1</sup> Sections 407 and 408 were substituted for sections 407 and 408 by section 80 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

**410.** Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court Division. Appeal from sentence of Court of Session

**411.** *[Omitted by the Adaptation of Central Acts and Ordinance, 1949, Schedule.]*

**411A.** *[Omitted by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978, section 2 and Schedule.)]*

**412.** Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by <sup>1</sup>[\* \* \*] a Court of Session <sup>2</sup>[or any Metropolitan Magistrate] or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence. No appeal in certain cases when accused pleads guilty

**413.** Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which <sup>3</sup>[\*\*\*] a Court of Session passes a sentence of imprisonment not exceeding one month only, or in which a Court of Session or <sup>4</sup>[Chief Judicial Magistrate] <sup>5</sup>[or Metropolitan Magistrate] or other Magistrate of the first class passes a sentence of fine not exceeding fifty Taka only. No appeal in petty cases

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<sup>1</sup> The words and comma "the High Court Division," were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "or any Metropolitan Magistrate" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>3</sup> The words and letter "the High Court Division passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred Taka only or in which" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The words "Chief Judicial Magistrate" were substituted for the words "District Magistrate" by section 81 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>5</sup> The words "or Metropolitan Magistrate" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

**Explanation**—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

No appeal from certain summary convictions

**414.** Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two hundred Taka only.

Proviso to sections 413 and 414

**415.** An appeal may be brought against any sentence referred to in section 413 or section 414 by which any punishment therein mentioned is combined with any other punishment, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

**Explanation**— A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Special right of appeal in certain cases

<sup>1</sup>[**415A.** Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.]

**416.** [*Repealed by the Criminal Law Amendment Act, 1923 (Act No. XII of 1923), section 26.*]

Appeal in case of acquittal

<sup>2</sup>[**417.** <sup>3</sup>[(1) Subject to the provisions of sub-section (4), the Government may, in any case, direct the Public Prosecutor to present an appeal—

<sup>1</sup> Section 415A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act XVIII of 1923).

<sup>2</sup> Sections 417, 417A and 418 were substituted for the original sections 417 and 418 by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> Sub-section (1) was substituted for sub-section (1) by section 5 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1983 (Ordinance No. XXXVII of 1983).

- (a) to the High Court Division from an original or appellate Order of acquittal passed by any Court of Session;
- (b) to the Court of Session from an original or appellate Order of acquittal passed by any Magistrate.]

<sup>1</sup>[(2) Notwithstanding anything contained in section 418, if such an order is passed in any case instituted upon complaint, and if the order involves an error of law occasioning failure of justice, the complainant may present an appeal-

- (a) to the High Court Division from an original order of acquittal passed by any Court of Session;
- (b) to the Court of Session from an original order of acquittal passed by any Magistrate.]

(3) No appeal by the complainant from an order of acquittal shall be entertained by the High Court Division <sup>2</sup>[or a Court of Session] after the expiry of sixty days from the date of the order of acquittal.

(4) If, in any case, the admission of an appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).

**417A.** (1) The Government may, in any case of conviction on a trial held by any court, direct the Public Prosecutor to present an appeal to the High Court Division against the sentence on the ground of its inadequacy.

Appeal against  
inadequacy of  
sentence

(2) A complainant may, in any case of conviction on a trial held by any Court, present an appeal to the Appellate Court against the sentence on the ground of its inadequacy:

Provided that no appeal under this sub-section shall be entertained by the Appellate Court after the expiry of sixty days from the date of conviction.

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<sup>1</sup> Sub-section (2) was substituted for sub-section (2) by section 3 of the Code of Criminal Procedure (Amendment) Act, 2000 (Act No. XLI of 2000).

<sup>2</sup> The words and letter "or a Court of Session" were inserted by section 3 of the Code of Criminal Procedure (Amendment) Act, 2000 (Act No. XLI of 2000).

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Appellate Court shall not enhance the sentence except after giving to the accused 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.

Appeals on what matters admissible

**418.** An appeal may lie on a matter of fact as well as a matter of law.

**Explanation**—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.]

Petition of appeal

**419.** Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against <sup>1</sup>[\* \* \*].

Procedure when appellant in jail

**420.** If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Summary dismissal of appeal

**421.** (1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall pursue the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

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<sup>1</sup> The commas, words, letters and figure ", and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

**422.** If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

Notice of  
appeal

and, in cases of appeals under <sup>1</sup>[\* \* \*] or section 417, the Appellate Court shall cause a like notice to be given to the accused.

**423.**(1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under <sup>1</sup>[\* \* \*] section 417, the accused, if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

Powers of  
Appellate Court  
in disposing of  
appeal

- (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or <sup>2</sup>[sent] for trial, as the case may be, or find him guilty and pass sentence on him according to law ;
- (b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or <sup>2</sup>[sent] for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (3), not so as to enhance the same;

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<sup>1</sup> The words, figures, comma and brackets "section 411A, sub-section (2) or" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The word "sent" was substituted for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>1</sup>[(bb) in an appeal for enhancement of sentence, (1) reverse the finding and sentence and acquit or discharge the accused or order him to be retired by a Court competent to try the offence, or (2) alter the finding maintaining the sentence, or (3) with or without altering the finding, alter the nature or the extent, or the nature and extent, or the sentence, so as to enhance or reduce the same;]

(c) in an appeal from any other order, alter or reverse such order;

(d) make any amendment or any consequential or incidental order that may be just or proper <sup>2</sup>[:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed than might have been inflicted for that offence by the Court passing the order or sentence under appeal.]

(2) [Omitted by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978), section 2 and Schedule.]

Judgments of subordinate Appellate Courts

**424.** The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than High Court Division:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order by High Court Division on appeal to be certified to lower Court

**425.** <sup>3</sup>[(1) Whenever a case is decided on appeal by the High Court Division under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed:

<sup>1</sup> Clause (bb) was inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The colon (:) was substituted for the full-stop (.) and thereafter the provisos were added by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> Sub-section (1) was substituted for sub-section (1) by section 82 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

Provided that where the finding sentence or order was recorded or passed by a Magistrate other than the Chief Metropolitan Magistrate, or the Chief Judicial Magistrate, the certificate shall be sent through the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be.]

(2) The Court to which the High Court Division certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court Division; and, if necessary, the record shall be amended in accordance therewith.

**426.** (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

Suspension of sentence pending appeal. Release of appellant on bail

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court Division in the case of any appeal by a convicted person to a Court subordinate thereto.

(2A) When any person <sup>1</sup>[is sentenced to imprisonment for a term not exceeding one year] by a Court, and an appeal lies from that sentence, the Court may, if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section (1) and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(2B) Where High Court Division is satisfied that a convicted person has been granted special leave to appeal to the <sup>2</sup>[Appellate Division of the Supreme Court] against any sentence which it has imposed or maintained, it may if it so thinks fit

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<sup>1</sup> The words "is sentenced to imprisonment for a term not exceeding one year" were substituted for the words "other than a person accused of a non-bailable offence is sentenced to imprisonment" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "Appellate Division of the Supreme Court" were substituted for the words "Supreme Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

order that pending the appeal the sentence or order appealed against be suspended, and also, if the said person is in confinement, that he be released on bail.

(3) When the appellant is ultimately sentenced to imprisonment, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of  
accused in  
appeal from  
acquittal

**427.** When an appeal is presented under <sup>1</sup>[section 417 or section 417A, the High Court Division or any other Appellate Court, as the case may be,] may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Appellate  
Court may take  
further  
evidence or  
direct it to be  
taken

**428.** (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is High Court Division, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken <sup>2</sup>[\* \* \*].

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<sup>1</sup> The words, figures and commas "section 417 or section 417A, the High Court Division or any other Appellate Court, as the case may be," were substituted for the words, figures, commas and brackets "section 411A, sub-section (2), or section 417, the High Court Division" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The semi-colon and words "; but such evidence shall not be taken in the presence of jurors or assessors" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.

**429.** When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure where Judges of Court of Appeal are equally divided

**430.** Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 <sup>1</sup>[, section 417A] and Chapter XXXII.

Finality of orders on appeal

**431.** Every appeal under <sup>2</sup>[section 417 or section 417A] shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

Abatement of appeals

## CHAPTER XXXII

### OF REFERENCE AND REVISION

**432 and 433.** [Omitted by the Adaptation of Central Acts and Ordinances Order, 1949, Schedule.]

**434.** [Omitted by the Criminal Procedure Amendment Act, 1943 (Act No. XXVI of 1943), section 6.]

**435.** (1) The High Court Division or any Sessions Judge <sup>3</sup>[, <sup>4</sup>[\*\*\*]], may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits

Power to call for records of inferior Courts

<sup>1</sup> The comma, word and figure ", section 417A" were inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words and figures "section 417 or section 417A" were substituted for the words, figures, commas and brackets "section 411A, sub-section (2), or section 417" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The comma and words ", Chief Metropolitan Magistrate" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>4</sup> The words and comma "Chief Metropolitan Magistrate or District Magistrate, or any Sub-divisional Magistrate empowered by Government in this behalf" were omitted by section 83(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

of its or his jurisdiction for the purpose of satisfying itself or himself as 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 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.

**Explanation**—All Magistrates, <sup>1</sup>[whether Executive or Judicial], shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section <sup>2</sup>[\* \* \*].

<sup>3</sup>[\*\*\*]

(3) [*Repealed by section 116 of the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).*]

<sup>4</sup>[\*\*\*]

Power to order inquiry

**436.** On examining any record under section 435 or otherwise, the High Court Division or the Sessions Judge may direct the <sup>5</sup>[Chief Metropolitan Magistrate or <sup>6</sup>[Chief Judicial Magistrate]] by himself or by any of the Magistrates subordinate to him to make, and the <sup>5</sup>[Chief Metropolitan Magistrate or <sup>6</sup>[Chief Judicial Magistrate]] may himself make, or direct any Sub-ordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or

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<sup>1</sup> The words "whether Executive or Judicial" were substituted for the words "whether exercising original or appellate Jurisdiction" by section 83(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>2</sup> The words and figure "and of section 437" were omitted by section 7 of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> Sub-section (2) was omitted by section 83(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>4</sup> Sub-section (4) was omitted by section 83(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>5</sup> The words "Chief Metropolitan Magistrate or District Magistrate" were substituted for the words "District Magistrate" by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>6</sup> The words "Chief Judicial Magistrate" were substituted for the words "District Magistrate" by section 84 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

sub-section (3) of section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

**437.** [*Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).*]

**438.** [*Omitted by section 85 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009)*]

**439.** (1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court Division may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

High Court  
Division's  
powers of  
revision

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate <sup>1</sup>[\* \* \*], the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by <sup>2</sup>[a Metropolitan Magistrate or] a Magistrate of the first class.

<sup>3</sup>[(4) Nothing in this section shall be deemed to authorize the High Court Division to convert a finding of acquittal into one of conviction, or to entertain any proceedings in revision with respect to an order made by the Sessions Judge under section 439A].

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.

Sessions  
Judge's powers  
of revision

<sup>4</sup>**439A.** (1) In the case of any proceeding the record of which has been called for by himself or which otherwise comes to his knowledge, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court Division under section 439.

(2) 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.

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<sup>1</sup> The words and figure "acting otherwise than under section 34" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The letter and words "a Metropolitan Magistrate or" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>3</sup> Sub-section (4) was substituted for sub-section (4) by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> Section 439A was inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(3) An Additional Sessions Judge shall have and may exercise all powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him under any general or special order of the Sessions Judge.]

**440.** No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: Optional with Court to hear parties

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).

**441.** [Omitted by Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]

**442.** When a case is revised under this Chapter by the High Court Division, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith. High Court Division's order to be certified to lower Court or Magistrate

### <sup>1</sup>[CHAPTER XXXIIA

#### TIME FOR DISPOSAL OF APPEAL AND REVISION

**442A.** (1) An Appellate Court shall dispose of an appeal filed before it within <sup>2</sup>[ninety days] from the date of <sup>3</sup>[service of notice upon respondents]. Time for disposal of appeals and revision

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<sup>1</sup> CHAPTER XXXIIA was inserted by section 30 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> The words "ninety days" were substituted for the words "sixty days" by section 16 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>3</sup> The words "service of notice upon respondents" were substituted for the words "admission of the appeal" by the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

(2) A Court having power of revision shall dispose of a proceeding in revision within <sup>1</sup>[ninety days] from the date of <sup>2</sup>[service of notice upon the parties].

<sup>3</sup>[(3) In this section, in determining the time, only the working days shall be counted.]]

### PART VIII

#### SPECIAL PROCEEDINGS

**CHAPTER XXXIII.**—[Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (Act No. II of 1950), Schedule.]

#### CHAPTER XXXIV

##### LUNATICS

Procedure in  
case of accused  
being lunatic

**464.** (1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defense, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

<sup>4</sup>[(1A) Pending such examination and inquiry the Magistrate may deal with the accused in accordance with the provisions of section 466.]

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

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<sup>1</sup> The words "ninety days" were substituted for the words "sixty days" by section 16 the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>2</sup> The words "service of notice upon the parties" were substituted for the words "calling for the records by it" by the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>3</sup> Sub-section (3) was added by section 6 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1983 (Ordinance No. XXXVII of 1983).

<sup>4</sup> Sub-section (IA) was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>1</sup>[**465.** (1) If at the trial of any person before a Court of Session, it appears to the Court that such person is of unsound mind and consequently incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Court is satisfied of the fact, it shall record a finding to that effect and shall postpone further proceedings in the case.]

Procedure in case of person being lunatic before Court of Sessions

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.]

**466.** (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Release of lunatic pending investigation or trial

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the Government:

Custody of lunatic

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Government may have made under the Lunacy Act, 1912.

**467.** (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial

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<sup>1</sup> Section 465 was substituted for section 465 by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Procedure on  
accused  
appearing  
before  
Magistrate or  
Court

**468.** (1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be, and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466.

When accused  
appears to have  
been insane

**469.** When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate <sup>1</sup>[or, as the case may be, the Court is satisfied from the evidence given before him or it] that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate <sup>2</sup>[or, as the case may be, the Court shall proceed with the case].

Judgment of  
acquittal on  
ground of  
lunacy

**470.** Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

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<sup>1</sup> The words and commas "or, as the case may be, the court is satisfied from the evidence given before him or it" were substituted for the words "is satisfied from the evidence given before him" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words and commas "or, as the case may be, the Court shall proceed with the case" were substituted for the words "shall proceed with the case, and, if accused ought to be committed to the Court of Session or High Court Division, send him for trial before the Court of Session or High Court Division, as the case may be" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

**471.** (1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the action taken to the Government:

Person acquitted on such ground to be detained in safe custody

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Government may have made under the Lunacy Act, 1912.

(2) The Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector General of Prisons under section 473 or section 474.

Power of Government to relieve Inspector General of certain functions

**472.** [*Repealed by section 101 and Schedule II of the Lunacy Act, 1912 (Act No. IV of 1912).*]

**473.** If such person is detained under the provisions of section 466, and in the case of a person detained in a jail, the Inspector General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic prisoner is reported capable of making his defence

**474.** (1) If such person is detained under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the Government may thereupon order him to be released or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

Procedure where lunatic detained under section 466 or 471 is declared fit to be released

(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Government, which may order his release or detention as it thinks fit.

Delivery of  
lunatic to care  
of relative of  
friend

**475.** (1) Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, the Government may, upon the application of such relative or friend and on his giving security to the satisfaction of <sup>1</sup>[the Government] that the person delivered shall—

- (a) be properly taken care of and prevented from doing injury to himself or to any other person, and
- (b) be produced for the inspection of such officer, and at such times and places as the Government may direct, and
- (c) in the case of a person detained under section 466, be produced when required before such Magistrate or Court,

order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in sub-section (1), clause (b), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the inspecting officer shall be receivable as evidence.

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<sup>1</sup> The words "the Government" were substituted for the words "such Provincial Government" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**CHAPTER XXXV****PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING  
THE ADMINISTRATION OF JUSTICE**

<sup>1</sup>[476. (1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate:

Procedure in cases mentioned in section 195

Provided that, where the Court making the complaint is High Court Division, the complaint may be signed by such officer of the Court as the Court may appoint.

<sup>2</sup>[For the purpose of this sub-section, a Metropolitan Magistrate shall be deemed to be a Magistrate of the first class.]

<sup>3</sup>[(2) A Magistrate to whom a complaint is made under sub-section (1) or section 476A or section 476B shall, notwithstanding anything contained in Chapter XVI, proceed, as far as may be, to deal with the case as if it were instituted on a police report.]

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<sup>1</sup> Sections 476, 476A and 476B were substituted for section 476 by section 128 of the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>2</sup> Paragraph was added by section 60 and Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>3</sup> Sub-section (2) was substituted for "sub-section (2)" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(3) Where it is brought to the notice of such Magistrate or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

Superior Court may complain where subordinate Court has committed to do so

**476A.** The power conferred on Civil, Revenue and Criminal Courts by section 476, sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), in any case in which such former Court has neither made a complaint under section 476 in respect of such offence nor rejected an application for the making of such complaint; and, where the superior Court makes such complaint, the provisions of section 476 shall apply accordingly.

Appeals

**476B.** Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have made under section 476, and if it makes such complaint the provisions of that section shall apply accordingly.]

**477.** [*Repealed by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), section 129.*]

**478-479.** [*Omitted by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978), section 2 and Schedule.*]

Procedure in certain cases of contempt

**480.** When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 or the Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of

the offence and sentence the offender to fine not exceeding two hundred taka, and in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

**481.** (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence. Record in such cases

(2) If the offence is under section 228 of the Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

**482.** (1) If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred taka should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate. Procedure where Court considers that case should not be dealt with under section 480

(2) The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

**483.** When the Government so directs, any Registrar or any Sub-Registrar appointed under the <sup>1</sup>[Registration Act, 1908] shall be deemed to be a Civil Court within the meaning of sections 480 and 482. When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482

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<sup>1</sup> The words, comma and figure "Registration Act, 1908" were substituted for the words, comma and figure "Indian Registration Act, 1877" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Discharge of offender on submission or apology

**484.** When any Court has under section 480 or section 482 adjudged an offender to punishment or forwarded him to a Magistrate for trial for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document

**485.** If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and in the case of High Court Division shall be deemed guilty of a contempt.

Summary procedure for punishment for non-attendance by a witness in obedience to summons

<sup>1</sup>**[485A.** (1) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court, may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding Taka two hundred and fifty.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.]

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<sup>1</sup> Section 485A was inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

**486.** (1) Any person sentenced by any Court under section 480 or section 485 <sup>1</sup>[or section 485A] may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

Appeals from conviction in contempt cases

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge.

**487.** (1) Except as provided in sections 480 <sup>2</sup>[, 485 and 485A], no Judge of a Criminal Court or Magistrate, other than a Judge of <sup>3</sup>[the Supreme Court] shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves

(2) [*Omitted by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978), section 2 and Schedule.*]

<sup>1</sup> The words and figure "or section 485A" were inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The comma, word and figures ", 485 and 485A" were substituted for the word and figure "and 485" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The words "the Supreme Court" were substituted for the words "the High Court Division" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

### CHAPTER XXXVI

#### OF THE MAINTENANCE OF WIVES AND CHILDREN

<sup>1</sup>[Sections 488, 489 and 490 were omitted]

### CHAPTER XXXVII

#### DIRECTIONS OF THE NATURE OF A *Habeas Corpus*

Power to issue directions of the nature of a *habeas corpus*.

**491.** (1) The High Court Division may, whenever it thinks fit, direct:—

- (a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody with such limits be set at liberty;
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and

<sup>2</sup>[\* \* \*]

(2) The <sup>3</sup>[Supreme Court] may, from time to time, frame rules to regulate the procedure in cases under this section.

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<sup>1</sup> Sections 488, 489 and 490 were omitted by section 86 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>2</sup> Clause (f) was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The words "Supreme Court" were substituted for the words "High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>1</sup>[(3) Nothing in this section applies to persons detained under any law for the time being in force providing for preventive detention.]

**491A.** [*Omitted by Schedule of the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (Act No. II of 1950).*]

## PART IX

### SUPPLEMENTARY PROVISIONS

#### CHAPTER XXXVIII

##### OF THE PUBLIC PROSECUTOR

**492.** (1) The Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors. Power to appoint Public Prosecutors.

(2) <sup>2</sup>[The <sup>3</sup>[District Magistrate], may, in the absence or the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such ranks as the Government may prescribe in this behalf to be Public Prosecutor for the purpose of any case.]

**493.** The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein, under his directions. Public Prosecutors may plead in all Courts in cases under his charge. Pleaders privately instructed to be under his direction.

<sup>1</sup> Sub-section (3) was substituted for sub-section (3) by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The words "The Chief Metropolitan Magistrate or the" were substituted for the comma and word ", the" by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>3</sup> The words "District Magistrate" were substituted for the words and commas "Chief Metropolitan Magistrate or the District Magistrate, or subject to the control of the District Magistrate, the Sub-divisional Magistrate" by section 87 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

Effect of  
withdrawal  
from  
prosecution

**494.** Any Public Prosecutor may, with the consent of the Court, <sup>1</sup>[\* \* \*] before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,—

- (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
- (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

Permission to  
conduct  
prosecution

**495.** (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by the Government in this behalf but no person, other than the <sup>2</sup>[Attorney-General], Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Government in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

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<sup>1</sup> The words and comma "in cases tried by jury before the return of the verdict, and in other cases" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "Attorney-General" were substituted for the words and comma "Advocate-General, standing Counsel" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act 1973, (Act No. VIII of 1973).

## CHAPTER XXXIX

### OF BAIL

**496.** 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 proceedings 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, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided :

In what cases  
bail to be taken

Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3).

**497.** (1) When any person accused of any 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, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life :

When bail may  
be taken in  
case of non-  
bailable  
offence

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a

bond without sureties for his appearance to hear judgment delivered.

(5) The High Court Division or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

**497A.** [Omitted by section 2 the Code of Criminal Procedure (Amendment) Ordinance, 1982 (Ordinance No. IX of 1982).]

Power to direct admission to bail or reduction of bail

**498.** The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court Division or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

Bond of accused and sureties

**499.** (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court Division, Court of Session or other Court to answer the charge.

Discharge from custody

**500.** (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

(2) Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Power to order sufficient bail when that first taken is insufficient

**501.** If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him

to find sufficient sureties, and, on his failing so to do, may commit him to jail.

**502.** (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants. Discharge of sureties

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

## CHAPTER XL

### OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES

**503.** (1) Whenever in the course of an inquiry, a trial or any other proceeding under this Code, it appears to <sup>1</sup>[a Metropolitan Magistrate], <sup>2</sup>[a Chief Judicial Magistrate], a Court of Session or the High Court Division that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate <sup>3</sup>[Chief Metropolitan Magistrate or Chief Judicial Magistrate], within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness. When attendance of witness may be dispensed with Issue of commission and procedure thereunder

<sup>1</sup> The letter and words "a Metropolitan Magistrate" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>2</sup> The letter and words "a Chief Judicial Magistrate" were substituted for the words "a District Magistrate" by section 88(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>3</sup> The words "Chief Metropolitan Magistrate or Chief Judicial Magistrate" were substituted for the words "or Magistrate of the first class" by section 88(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

(2)-(2A) [*Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.*]

(2B) When the witness resides in the United Kingdom or any other country of the Commonwealth other than Bangladesh, or in the Union of Burma, or any other country in which reciprocal arrangement in this behalf exists, the commission may be issued to such Court or Judge having authority in this behalf in that country as may be specified by the Government by notification in the official Gazette.

(3) The Magistrate or officer to whom the commission is issued, or if he is the <sup>1</sup>[Chief Metropolitan Magistrate or the Chief Judicial Magistrate], he, or <sup>2</sup>[any other Magistrate] as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

(4) [*Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.*]

Commission in  
case of witness  
being within  
<sup>3</sup>[a]  
Metropolitan  
Area

<sup>4</sup>[504. (1) If the witness is within the local limits of the jurisdiction of any Metropolitan Magistrate, the Magistrate or Court issuing the commission may direct the same to such Metropolitan Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

(2) When a commission is issued under this section to the Chief Metropolitan Magistrate, he may delegate his powers and duties under the commission to any Metropolitan Magistrate subordinate to him.]

<sup>1</sup> The words "Chief Metropolitan Magistrate or the Chief Judicial Magistrate" were substituted for the words "District Magistrate" by section 88(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>2</sup> The words "any other Magistrate" were substituted for the words and comma "such Magistrate, of the first class" by section 88(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>3</sup> The letter "a" in the marginal heading was substituted for the word "Dacca" by section 2 of the Code of Criminal Procedure (Amendment) Act, 1980 (Act No IV of 1980).

<sup>4</sup> Section 504 was inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

**505.** (1) The parties to any proceeding under this Code in which a commission is issued, may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue and when the commission is directed to a Magistrate or officer mentioned in section 503, such Magistrate or the Officer to whom the duty of executing such commission has been delegated shall examine the witness upon such interrogatories.

Parties may examine witnesses

(2) Any such party may appear before such Magistrate or officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

**506.** Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a <sup>1</sup>[Chief Metropolitan Magistrate or Chief Judicial Magistrate], it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, <sup>2</sup>[such Magistrate shall apply to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, to whom he is subordinate], stating the reasons for the application; <sup>3</sup>[and the Chief Judicial Magistrate or the Chief Metropolitan Magistrate] may either issue a commission in the manner hereinbefore provided or reject the application.

Power of Subordinate Magistrate to apply for issue of commission

**507.** (1) After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the

Return of commission

Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

<sup>1</sup> The words "Chief Metropolitan Magistrate or Chief Judicial Magistrate" were substituted for the words "Metropolitan Magistrate or District Magistrate" by section 89(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>2</sup> The words and comma "such Magistrate shall apply to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, to whom he is subordinate" were substituted for the words "such Magistrate shall apply to the District Magistrate" by section 89(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>3</sup> The words "and the Chief Judicial Magistrate or the Chief Metropolitan Magistrate" were substituted for the words "and the District Magistrate" by section 89(c) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Evidence Act, 1872, may also be received in evidence at any subsequent stage of the case before another Court.

Adjournment of inquiry or trial

**508.** In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Application of this Chapter to commissions issued in Burma

<sup>1</sup>**[508A.** The provisions of sub-section (3) of section 503, <sup>2</sup>[section 504] and so much of sections 505 and 507 as relates to the execution of a commission and its return by the Magistrate or officer to whom the commission is directed shall apply in respect of commissions issued by any Court or Judge having authority in this behalf in the United Kingdom or in any other country of the commonwealth other than Bangladesh or in the Union of Burma or any other country in which reciprocal arrangement in this behalf exists under the law in force in that country relating to commissions for the examination of witnesses, as they apply to commissions issued under section 503 or section 506.]

#### CHAPTER XLI

##### SPECIAL RULES OF EVIDENCE

Deposition of medical witness

**509.** (1) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Power to summon medical witness

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

Report of post-mortem, examination

<sup>3</sup>**[509A.** Where in any inquiry, trial or other proceeding under this Code the report of a post-mortem examination is required to be used as evidence, and the Civil Surgeon or other medical officer who made the report is dead or is incapable of giving

<sup>1</sup> Section 508A was inserted by section 3 of the Code of Criminal Procedure (Amendment) Act, 1940 (Act No. XXXV of 1940).

<sup>2</sup> The word and figure "section 504" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>3</sup> Section 509A was inserted by section 31 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

evidence or is beyond the limits of Bangladesh and his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such report may be used as evidence.]

<sup>1</sup>[**510.** Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or any serologist, handwriting expert, finger print expert or fire-arm expert appointed by the Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may, without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code.]

Report of  
Chemical  
Examiner,  
serologist, etc.

<sup>2</sup>[**510A.** (1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.

Evidence of  
formal  
character on  
affidavit

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution of the accused, summon and examine any such person as to the facts contained in his affidavit.]

**511.** In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force—

Previous  
conviction or  
acquittal how  
proved

- (a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or
- (b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

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<sup>1</sup> Section 510 was substituted for section 510 by section 32 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> Section 510A was inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Record of evidence in absence of accused

**512.** (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try <sup>1</sup>[\* \* \*] such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may <sup>2</sup>[\* \* \*] be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

Record of evidence when offender unknown

(2) If it appears that an offence punishable with death or transportation has been committed by some person or persons unknown, the High Court Division may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of Bangladesh.

## CHAPTER XLII

### PROVISION AS TO BONDS

Deposit instead of recognizance

**513.** When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

Procedure on forfeiture of bond

**514.** (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a <sup>3</sup>[Metropolitan Magistrate or] Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon

<sup>1</sup> The words "or commit for trial" were omitted by section 2 and Schedule of the Law Reforms Ordinance, Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The commas and words ", on the arrest of such person," were omitted by section 33 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>3</sup> The words "Metropolitan Magistrate or" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the attachment and sale of any movable property belonging to such person without such limits, when endorsed by the District Magistrate<sup>1</sup>[\*\*\*] within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(7) When any person who has furnished security under section 106 or section 118<sup>2</sup>[\*\*\*] is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 514B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

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<sup>1</sup> The words "or Chief Metropolitan Magistrate" were omitted by section 90(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>2</sup> The words and figure "or section 562" were omitted by section 90(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

Procedure in case of insolvency or death of surety or when a bond is forfeited

<sup>1</sup>**514A.** When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court by whose order such bond was taken, or a <sup>2</sup>[Metropolitan Magistrate or] Magistrate of the first class, may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and, if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

Bond required from a minor

**514B.** When the person required by any Court or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.]

Appeal from, and revision of, orders under section 514

<sup>3</sup>**515.** All orders passed under section 514, by any Magistrate whether Executive or Judicial or Metropolitan Magistrate shall be appealable to the District Magistrate, Sessions Judge or the Metropolitan Sessions Judge respectively and where no such appeal is made, the order may be revised-

- (a) by the Chief Judicial Magistrate, if the order is passed by a Judicial Magistrate other than the Chief Judicial Magistrate;
- (b) by the Chief Metropolitan Magistrate if the order is passed by a Metropolitan Magistrate other than the Chief Judicial Magistrate; and
- (c) by the District Magistrate, if the order is passed by an Executive Magistrate other than the District Magistrate.]

Power to direct levy of amount due on certain recognizances.

**516.** The High Court Division or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court Division or Court of Session.

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<sup>1</sup> Sections 514A and 514B were inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>2</sup> The words "Metropolitan Magistrate or" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>3</sup> Section 515 was substituted for section 515 by section 91 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

**CHAPTER XLIII**  
**OF THE DISPOSAL OF PROPERTY**

<sup>1</sup>[**516A.** When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, 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 or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.]

Order for custody and disposal of property pending trial in certain cases

**517.** (1) When an inquiry or a 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.

Order for disposal of property regarding which offence committed

(2) When High Court Division or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the <sup>2</sup>[Chief Metropolitan Magistrate or] District Magistrate.

(3) When an order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of

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<sup>1</sup> Section 516A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>2</sup> The words "Chief Metropolitan Magistrate or" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.

**Explanation**—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.

Order may  
take form of  
reference to  
District or  
<sup>1</sup>[\*\*\*]  
Magistrate

**518.** In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the <sup>2</sup>[District Magistrate], who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Payment to  
innocent  
purchaser of  
money found  
on accused

**519.** When any person is convicted of any offence which includes, or amounts to theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Stay of order  
under section  
517, 518, or  
519

**520.** Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed

<sup>1</sup> The words "sub-divisional" in the marginal heading were omitted by section 92(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>2</sup> The words "District Magistrate" were substituted for the words and comma "Chief Metropolitan Magistrate, District Magistrate or to a Sub-divisional Magistrate" by section 92(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just.

**521.** (1) On a conviction under the Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

Destruction of libellous and other matter

(2) The Court may, in like manner, on a conviction under the Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

**522.** (1) Whenever a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the Court that by such force or show of force or by criminal intimidation any person has been dispossessed of any immovable property, the Court may, if it thinks fit, when convicting such person or at any time within one month from the date of the conviction order the person dispossessed to be restored to the possession of the same.

Power to restore possession of immovable property

(2) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

(3) An order under this section may be made by any Court of appeal, confirmation, reference or revision.

**523.** (1) The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure by police upon seizure of property taken under section 51 or stolen

Procedure  
where owner of  
property seized  
unknown

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such case, issue a Proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within <sup>1</sup>[one month] from the date of such proclamation.

Procedure  
where no  
claimant  
appears

**524.** (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the <sup>2</sup>[Chief Metropolitan Magistrate, Chief Judicial Magistrate] or of a Magistrate of the first class empowered by the Government in this behalf.

(2) In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Power to sell  
perishable  
property

**525.** If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than ten taka the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

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<sup>1</sup> The words "one month" were substituted for the words "six months" by Article 2 of the Code of Criminal Procedure (Amendment) Order, 1973 (President's Order No. I of 1973).

<sup>2</sup> The words and comma "Chief Metropolitan Magistrate, Chief Judicial Magistrate" were substituted for the words and commas "Metropolitan Magistrate, District Magistrate, or Sub-divisional Magistrate" by section 93 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

**CHAPTER XLIV**  
OF THE TRANSFER OF CRIMINAL CASES

<sup>1</sup>[**525A.** (1) The Appellate Division may direct the transfer of any particular case or appeal from one permanent Bench of the High Court Division to another permanent Bench of the High Court Division, or from any Criminal Court within the jurisdiction of one permanent Bench of the High Court Division to any other Criminal Court of equal or superior jurisdiction within the jurisdiction of another permanent Bench of the High Court Division, whenever it appears to it that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

Power of Appellate Division to transfer cases and appeals

(2) The permanent Bench of the High Court Division or the Court, as the case may be, to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Bench or Court, as the case may be.]

**526.** (1) Whenever it is made to appear to the High Court Division—

High Court Division may transfer case or itself try it

- (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or
- (d) that an order under this section will tend to the general convenience of the parties or witnesses, or
- (e) that such an order is expedient for the ends of justice, or is required by any provision of this Code; it may order-
  - (i) that any offence be inquired into or tried by any Court not empowered under sections 177 to <sup>2</sup>[183] (both inclusive), but in other respects competent to inquire into or try such offence;
  - (ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;
  - (iii) that any particular case or appeal be transferred to and tried before itself; or

<sup>1</sup> Section 525A was inserted by section 7 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1983 (Ordinance No. XXXVII of 1983).

<sup>2</sup> The figure "183" was substituted for section 2 and Schedule of the figure "184" by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(iv) that an accused person be <sup>1</sup>[sent] for trial to itself or to a Court of Session.

(2) When the High Court Division withdraws for trial before itself any case from any Court it shall <sup>2</sup>[\* \* \*] observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court Division may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative <sup>3</sup>[:

Provided that no application shall lie to the High Court Division for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.].

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the <sup>4</sup>[Attorney-General], be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section, the High Court Division may direct him to execute a bond, with or without sureties, conditioned that he will, if so ordered, pay any amount which the High Court Division may under this section award by way of compensation to the person opposing the application.

Notice to  
Public  
Prosecutor of  
application  
under this  
section

(6) Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

<sup>1</sup> The word "sent" was substituted for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The commas, words and figure ", except as provided in section 267," were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The colon (:) was substituted for the full stop (.) at the end of sub-section (3) and thereafter the proviso was added by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The words "Attorney-General" were substituted for the words "Advocate General" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(6A) Where any application for the exercise of the power conferred by this section is dismissed, the High Court Division may if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding <sup>1</sup>[one thousand taka] as it may consider proper in the circumstances of the case.

(7) Nothing in this section shall be deemed to affect any order made under section 197.

(8) If in any inquiry under Chapter VIII <sup>2</sup>[\* \* \*] or any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred taka, that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon:

Adjournment  
on application  
under this  
section

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused.

(9) Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it.

**Explanation-**Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 344.

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<sup>1</sup> The words "one thousand taka" were substituted for the words "two hundred and fifty taka" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words and figure "or Chapter XVIII" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred taka that he will make such application within a reasonable time to be fixed by the Court, postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon.

**526A.** [Omitted by the Code of Criminal Procedure (Amendment) Ordinance, 1969 (Ordinance No. XX of 1969), section 2.]

Power of  
Sessions Judge  
to transfer  
cases

<sup>1</sup>[**526B.** (1) Whenever it is made to appear to a Sessions Judge that an order under this section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the Application of a party interested, or on his own initiative.

(3) The provisions of sub-sections (4) to (10) (both inclusive) of section 526 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court Division for an order under sub-section (1) of section 526.]

**527.** [Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.]

Sessions Judge  
may withdraw  
cases from  
Assistant  
Sessions Judge

**528.** (1) Any Sessions Judge may withdraw any case from, or recall any case which he has made over to, any <sup>2</sup>[Joint] Sessions Judge subordinate to him.

<sup>1</sup> Section 526B was inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The word "Joint" was substituted for the word "Assistant" by section 94(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

(1A) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, any Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(1B) Where a Sessions Judge withdraws or recalls a case under sub-section (1) or recalls a case or appeal under sub-section (IA), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be.

(2) <sup>1</sup>[The Chief Metropolitan Magistrate or <sup>2</sup>[Chief Judicial Magistrate or District Magistrate]] may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(3) The Government <sup>4</sup>[with the approval of the High Court Division] may authorize the <sup>5</sup>[Chief Metropolitan Magistrate or the Chief Judicial Magistrate] to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

<sup>3</sup>[Chief Metropolitan Magistrate, Chief Judicial Magistrate or District Magistrate may withdraw or refer cases  
Power to authorise <sup>6</sup>[Chief Metropolitan Magistrate or the Chief Judicial Magistrate] to withdraw classes of cases

<sup>1</sup> The words "The Chief Metropolitan Magistrate or any" were substituted for the word and comma "Any," by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>2</sup> The words "Chief Judicial Magistrate or District Magistrate" were substituted for the words "any District Magistrate or Sub-divisional Magistrate" by section 94(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>3</sup> In the marginal heading the words and comma "Chief Metropolitan Magistrate, Chief Judicial Magistrate or District" were substituted for the words "District or Sub-divisional" by section 94(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>4</sup> The words "with the approval of the High Court Division" were inserted by section 94(c) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>5</sup> The words "Chief Metropolitan Magistrate or the Chief Judicial Magistrate" were substituted for the words "District Magistrate" by section 94(c) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>6</sup> The words "Chief Metropolitan Magistrate or the Chief Judicial Magistrate" in the marginal heading were substituted for the words "District Magistrate" by section 94(c) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

(4) Any Magistrate may recall any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself.

(5) A Magistrate making an order under this section shall record in writing his reasons for making the same.

**CHAPTER XLIVA.**— [*Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (Act No. II of 1950), Schedule.*]

### CHAPTER XLV

#### OF IRREGULAR PROCEEDINGS

Irregularities  
which do not  
vitiate  
proceedings

**529.** If any Magistrate not empowered by law to do any of the following things, namely:—

- (a) to issue a search-warrant under section 98;
- (b) to order, under section 155, the police to investigate an offence;
- (c) to hold an inquest under section 176;
- (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;
- (e) to take cognizance of an offence under section 190, sub-section (1), clause (a) or clause (b);
- (f) to transfer a case under section 192;
- (g) to tender a pardon under section 337 or section 338;
- (h) to sell property under section 524 or section 525; or
- (i) to withdraw a case and try it himself under section 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities  
which vitiate  
proceedings

**530.** If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—

- (a) attaches and sells property under section 88;
- (b) issues a search-warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department;
- (c) demands security to keep the peace;
- (d) demands security for good behaviour;
- (e) discharges a person lawfully bound to be of good behaviour;
- (f) cancels a bond to keep the peace;

- (g) makes an order under section 133 as to a local nuisance;
- (h) prohibits, under section 143, the repetition or continuance of a public nuisance;
- (i) issues an order under section 144;
- (j) makes an order under Chapter XII;
- (k) takes cognizance, under section 190, sub-section (1) clause (c), of an offence;
- (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate;
- (m) calls, under section 435, for proceedings;
- (n) makes an order for maintenance;
- (o) revises, under section 515, an order passed under section 514;
- (p) tries an offender;
- (q) tries an offender summarily; or
- (r) decides an appeal;

his proceedings shall be void.

**531.** No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district,<sup>1</sup> [\*\*\*] or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Proceedings in wrong place

**532.** [Omitted by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978), section 2 and Schedule.]

**533.(1)** If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Evidence Act, 1872, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

Non-compliance with provisions of section 164 or 364

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<sup>1</sup> The word "sub-division" was omitted by section 95 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

(2) The provisions of this section apply to Courts of Appeal, Reference and Revision.

**534.** [Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (II of 1950), Schedule.]

Effect of omission to prepare charge

**535.** (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

**536.** [Omitted by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978), section 2 and Schedule.]

Finding or sentence when reversible by reason of error or omission in charge or other proceedings

**537.** Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

- (a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

<sup>1</sup>[\* \* \*]

<sup>2</sup>[\* \* \*]

**Explanation**—In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

<sup>1</sup> Clause (b) was repealed by section 148 of the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>2</sup> Clauses (c) and (d) were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

**538.** No. attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto.

Attachment not illegal, person making same not trespasser for defect or want of form in proceedings

#### CHAPTER XLVI

#### MISCELLANEOUS

**539.** Affidavits and affirmations to be used before High Court Division or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the State or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in Bangladesh <sup>1</sup>[\* \* \*].

Courts and persons before whom affidavits may be sworn

<sup>2</sup>[**539A.** (1) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

Affidavit in proof of conduct of public servant

An affidavit to be used before any Court other than High Court Division under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and, in the latter case, the deponent shall clearly state the grounds of such belief.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

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<sup>1</sup> The commas and words ", or Any Commissioner to administer oaths in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> Sections 539A and 539B were inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

Local  
inspection

**539B.** (1) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost:

<sup>1</sup>[\* \* \*]]

Power to  
summon  
material  
witness or  
examine  
person present

**540.** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Provision for  
inquiries and  
trial being held  
in the absence  
of accused in  
certain cases

**540A.** (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by <sup>2</sup>[an advocate], dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by <sup>2</sup>[an advocate], or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

<sup>1</sup> Proviso was omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "an advocate" were substituted for the letter and word "a pleader" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

**541.** (1) Unless when otherwise provided by any law for the time being in force, the Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to  
appoint place  
of  
imprisonment

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

Removal to  
criminal jail of  
accused or  
convicted  
persons who  
are in  
confinement in  
civil jail, and  
their return to  
the civil jail

(3) When a person is removed to a criminal jail under subsection (2), he shall, on being released therefrom, be sent back to the civil jail, unless either—

- (a) three years have lapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under <sup>1</sup>[section 58] of the <sup>2</sup>[Code of Civil Procedure, 1908]; or
- (b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under <sup>3</sup>[section 58] of the <sup>2</sup>[Code of Civil Procedure, 1908].

**542.** [*Repealed by section 3 and II Schedule of the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951).*]

**543.** When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Interpreter to  
be bound to  
interpret  
truthfully

<sup>1</sup> The word and figure "section 58" were substituted for the word and figure "section 342" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>2</sup> The words, comma and figure "Code of Civil Procedure, 1908" were substituted for the words "Code of Civil Procedure" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The word and figure "section 58" were substituted for the word and figure "section 341" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Expenses of complainants and witnesses

**544.** Subject to any rules made by the Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Power of Court to pay expenses or compensation out of fine

**545.** (1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

- (a) in defraying expenses properly incurred in the prosecution;
- (b) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;
- (c) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser, of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Payments to be taken into account in subsequent suit

**546.** At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Order of payment of certain fees

<sup>1</sup>**[546A.** (1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused,

<sup>1</sup> Section 546A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

may in addition to the penalty imposed upon him, order him to pay to the complainant—

- (a) the fee (if any) paid on the petition of complaint or for the examination of the complainant, and
- (b) any fees paid by the complainant for serving processes on his witnesses or on the accused,

paid by complainant in non-cognizable cases

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an Appellate Court, or by the High Court Division, when exercising its powers of revision.]

**547.** Any money (other than a fine) payable by virtue of any order made under this code, and the method of recovery of which is not otherwise expressly provided for shall be recoverable as if it were a fine.

Moneys ordered to be paid recoverable as fines

**548.** If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of <sup>1</sup>[\* \* \*] any order or deposition or other part of the record he shall, on applying for such copy, be furnished therewith:

Copies of proceedings

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

**549.** (1) The Government may make rules consistent with this Code and the Bangladesh Army Act, 1952 (XXXIX of 1952), the Bangladesh Air Force Act, 1953 (VI of 1953), and the Bangladesh Navy Ordinance, 1961 (XXXV of 1961), and any similar law for the time being in force as to the cases in which persons subject to military, naval or air force law, shall be tried by a Court to which the Code applies, or by Court martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial such Magistrate shall have regard to such rules,

Delivery to military authorities of persons liable to be tried by Court martial

<sup>1</sup> The words "the Judge's charge to the jury or of" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance XLIX of 1978).

and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, ship or detachment, to which he belongs, or to the commanding officer of the nearest military, naval or air-force station, as the case may be, for the purpose of being tried by Court-martial.

Apprehension  
of such persons

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of soldiers, sailors or airman stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Powers of  
police to seize  
property  
suspected to be  
stolen

**550.** Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

Powers of  
superior  
officers of  
police

**551.** Police -officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Power to  
compel  
restoration of  
abducted  
females

**552.** Upon complaint made to a <sup>1</sup>[Metropolitan Magistrate <sup>2</sup>[or a Magistrate of the first class] or] District Magistrate on oath of the abduction or unlawful detention of woman, or of a female child under the age of sixteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

**553.** *[Repealed by section 3 and II Schedule of the Federal Laws (Revision and declaration) Act, 1951 (Act No. XXVI of 1951).]*

<sup>1</sup> The words "Metropolitan Magistrate or" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>2</sup> The words "or a Magistrate of the first class" were inserted after the words "Metropolitan Magistrate" by section 96 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

**554.** (1) With the previous sanction of the <sup>1</sup>[Government, the Supreme Court] may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of chartered High Court Division to make rules for inspection of records of subordinate Courts

(2) <sup>2</sup>[The Supreme Court] may, from time to time, and with the previous sanction of the Government—

Power of other High Court Division to make rules for other purposes

- (a) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;
- (b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;
- (c) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and
- (d) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the official Gazette.

**555.** Subject to the power conferred by section 554, and by <sup>3</sup>[article 107 of the Constitution of the People's Republic of Bangladesh], the forms set forth in the fifth schedule, with such

Forms

<sup>1</sup> The words and comma "Government, the Supreme Court" were substituted for the words and comma "Government, any High Court Division" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "The Supreme Court" were substituted for the words "Every High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

<sup>3</sup> The words and figure "article 107 of the Constitution of the People's Republic of Bangladesh" were substituted for the words and figures "Article 101 and 102 of the Constitution" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

variation as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

Case in which Judge or Magistrate is personally interested

**556.** No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from this Court, try <sup>1</sup>[\* \* \*] any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

**Explanation**—A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

*Illustration*

A, as Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.

Practicing pleader not to sit as Magistrate in certain Courts

**557.** No pleader who practices in the Court of any Magistrate in a district, shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.

Power to decide language of Courts

**558.** The Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by <sup>2</sup>[it].

Provision for powers of Judges and Magistrates being exercised by their successors in office

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

<sup>1</sup> The words "or commit for trial" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The word "it" was substituted for the words and comma "it, other than the Supreme Court" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(2) When there is any doubt as to who is the successor in office of any Magistrate, <sup>1</sup>[the Chief Metropolitan Magistrate or, <sup>2</sup>[the Chief Judicial Magistrate or the District Magistrate], shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

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

**560.** A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Officers concerned in sales not to purchase or bid for property

**561.** (1) Notwithstanding anything in this Code, no Magistrate <sup>3</sup>[except the Chief Metropolitan Magistrate or a] <sup>4</sup>[Chief Judicial Magistrate] shall—

Special provision with respect to offence of rape by a husband

- (a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or
- (b) <sup>5</sup>[send] the man for trial for the offence.

<sup>1</sup> The words and commas "the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate" were substituted for the words "the District Magistrate" by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>2</sup> The words "the Chief Judicial Magistrate or the District Magistrate" were substituted for the words "as the case may be" by section 97 of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>3</sup> The words and letter "except the Chief Metropolitan Magistrate or a" were substituted for the word and letter "except a" by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>4</sup> The words "Chief Judicial Magistrate" were substituted for the words "District Magistrate" by section 98(a) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>5</sup> The word "send" was substituted for the word "commit" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(2) And, notwithstanding anything in this Code, <sup>1</sup>[if the Chief Metropolitan Magistrate or a] <sup>2</sup>[Chief Judicial Magistrate] deems it necessary to direct an investigation by a police-officer, with respect to such an offence as is referred to in sub-section (1), no police-officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation.

Saving of inherent power of High Court Division

<sup>3</sup>**561A.** Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court Division to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.]

#### *First Offenders*

**562-564.** [*Repealed by the Probation of Offenders Ordinance, 1960 (Ordinance No. XLV of 1960), section 16.*]

#### *Previously convicted offenders*

Order for notifying address of previously convicted offender

**565.** (1) When any person having been convicted—

- (a) by a Court in Bangladesh of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment of either description for a term of three years or upwards, or

<sup>4</sup>[\* \* \*],

is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years

<sup>1</sup> The words and letter "if the Chief Metropolitan Magistrate or a" were substituted for the word and letter "if a" by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>2</sup> The words "Chief Judicial Magistrate" were substituted for the words "District Magistrate" by section 98(b) of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).

<sup>3</sup> Section 561A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>4</sup> Clause (b) was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

or upwards by the High Court Division, Court of Session, <sup>1</sup>[Metropolitan Magistrate], <sup>2</sup>[\*\*\*] or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of or absence from such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Government may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

(4) An order under this section may also be made by an Appellate Court or by the High Court Division when exercising its powers of revision.

(5) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.

SCHEDULE I – [*Repealed by section 3 and 2nd Schedule of the Repealing and Amending Act, 1914 (Act No. X of 1914).*]

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<sup>1</sup> The words "Metropolitan Magistrate" were inserted by Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>2</sup> The words and comma "District Magistrate, Sub-divisional Magistrate" were omitted by the section 99 of Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XXXII of 2009) (with effect from 1st November, 2007).