CHAPTER XI
Of False Evidence and Offences Against Public Justice

Chapter introduction.—*This Chapter relates to giving or falsifying false evidence (sections 191 to 200) and offences against public justice (sections 201 to 299).*

In sections 191 to 200 there are three principal heads under which offences relating to false evidence are classified, namely:

(A) (i) Giving false evidence or using false or fabricated evidence: Section 191.

(ii) Fabrication of false evidence: Section 192

(iii) Issuing or making a certificate or declaration in which there is a false statement: Sections 196 to 200.

(B) (i) Causing disappearance of evidence such as intentional omission to give information, giving false information and distraction of documentary evidence: (Sections 201, 204).

(ii) False Personation: (Sections 205 and 229)

(iii) Abuse of process of court: (Sections 206 to 210)

(iv) False charge of an offence: Section 211

(v) Screening and harbouring of offenders: Sections 201, 212, 213, 215, 216 and 216A

(vi) Offences against the justice by public servant: Sections 217, 223 and 225 A.

(vii) Resisting the law: Sections. 220, 225, 225B

(viii) Violation of condition of punishment: Section 227

(ix) Contempt of court: Section 228

(x) Personation of Juror or assessor; Section 229

In a charge under these sections except under section 197 if the false evidence were given at a trial or in the course of a judicial proceeding the charge should show not only giving false evidence but the particular stage at which the evidence was given. The proper way to prove that the judicial proceeding took place is to produce the record thereof. The Code does not define what is meant by "a stage of a judicial proceeding" but the Criminal Procedure Code gives it (See section 4). In order to make an enquiry a judicial proceeding it must be one in which the object is to determine a jural relationship between one person and another or a group of persons or between him and the public. Generally further the matter in which the false evidence is given must be within the jurisdiction of the person before whom it was sworn. It must be shown that the accused was bound by the oath or affirmation to state the truth or that he was bound to make a declaration upon any matter.

Section 191

191. Giving false evidence.—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations

(a) A, in support of a just claim which B has against Z for one thousand [1]*[taka] falsely swears on a trial that he heard Z admit the justice of B's claim, A has given false evidence.*

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z, A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and, therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

Cases and materials : Synopsis

1. *Scope of the section.*
2. *Bound by oath to state the truth.*
3. *Bound by express provision of law to state the truth.*
4. *Proceeding must be sanctioned by law.*
5. *"Makes any statement which is false".*
6. *Statement must be intentionally false.*
7. *Statements under S. 164, Criminal P.C.*
8. *False statements by accused persons.*
9. *Proceeding not authorised by law.*
10. *Contradictory statements.*
11. *Pleadings.*
12. *Affidavits.*
13. *False evidence given in Court—Section 479A Criminal P.C.*
14. *Deposition—Reading over to witness.*
15. *Materiality of the false statement.*
16. *Proof.*

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1. Substituted by Act No. VIII of 1973, Sch. w.e.f. 26-3-1971, for "rupees".

1. Scope of the section.—An oath or solemn affirmation is not a sine qua non to the offence of giving false evidence. The offence may be committed although the person giving evidence has neither been sworn nor affirmed. By section 14 of the Oaths Act, every person giving evidence on any subject before any Court is bound to state the truth. The idea of the oath, namely that the person swearing renounce the mercy and implicates the vengeance of Allah if he does not speak the truth, the idea of binding the conscience of the witnesses which still prevails in our country. The words of this section are very general and do not contain any limitation that the statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within this section if the false evidence is intentionally given. No doubt there must be a corrupt intention at the time the false statement is made.

(2) As affidavit filed by the complainant against a fact admitted in complaint itself must be considered to be false. It has been held that to file a false affidavit with the object of securing admission of an appeal, which is barred by time on the representation that the copying department has not yet supplied the copy, is a very grave and serious matter and the person who does so commits a serious wrong to the court and to the society as a whole *(AIR 1963 Punjab 185).* Where an accused sworn an affidavit all the paragraphs of which he certified on his "personal knowledge and belief" without any specification it was held that it was open to the accused to contend that the mischievous paragraphs were based on belief and therefrom he was not guilty of an offence under section 191 *(AIR 1947 All 235).* The provisions of section 342, CrPC that no oath shall be administered to the accused has reference only to the statement made by him in answer to question put by the Court in accordance with sub-section (1) of that section. It does not preclude him from making an affidavit in support of an application for transfer under section 526, CrPC and therefore there is no bar to prosecute him under section 193 to make a false statement. Where the basis for the prosecution is very flimsy and there is no reasonable probability of conviction the prosecution of witness for forgery is not judicially expedient. *(AIR 1946 Nag 38).*

(3) The burden is on the prosecution to prove that the statement made by the witness in his deposition in the Court was false as defined in section 191. The mere fact that the witness before the Court, made statement contrary to those which he had made earlier to the police during investigation, in the absence of anything to show that those earlier statements were true and must be true will not in any way shift the burden of proof from the prosecution to the accused.

(4) The offence under this section involves three ingredients:

(a) A person must be legally bound (a) by an oath or any express provision of law, to state the truth or (b) to make a declaration upon any subject.

(b) He must make a false statement.

(c) He must know or believe it to be false or must not believe it to be true.

(d) In order to make a statement "false evidence" within the meaning of this section, the following ingredients must be established:

(i) The person making the statement must be bound by an oath or an express provision of law to state the truth, or must be bound by law to make a declaration.

(ii) He must have made a statement which is false.

(iii) He must have known or believed that the statement is false, or must not have believed the statement to be true. *AIR 1954 Assam 259.*

(5) A convicted person cannot assert a claim for damages against a police officer or any other witness for giving perjured testimony at his trial. *(1983) 75 Law Ed 96.*

2. Bound by oath to state the truth.—(1) Every person who before any Court of Justice or before any Tribunal competent to administer an oath makes a false statement on oath is guilty under S. 193. *1979 MadLW (Cri) 165.*

(2) Once it is proved that the Court or Tribunal was authorised to administer the oath it will be presumed that the proper procedure was followed and that the witness made the statement on oath or affirmation. *AIR 1921 Bom 3.*

(3) Evidence given under a special oath is conclusive only as against the person offering to be bound by it. But that will not affect the liability to be prosecuted under this section if the evidence so given is false. *AIR 1924 Bom 511.*

(4) In perjury cases it is, however, desirable that the due administration of oath to the accused person is proved like any other fact. *AIR 1919 All 167.*

3. Bound by express provision of law to state the truth.—(1) A false statement by a witness is punishable under S. 193 of the Code even though such evidence was not given on oath or on solemn affirmation. *(1904) 1 CriLJ 1004.*

4. Proceeding must be sanctioned by law.—(1) It is necessary that the proceeding in which the false statement is made is one authorised and sanctioned by law. Where the proceeding is one which is without jurisdiction and not sanctioned by law, any false statement made therein is not an offence. *AIR 1954 Assam 259.*

(2) Where Amin made false return in execution proceedings the proceeding was one authorised by law and that the person making the false statement had committed an offence. *AIR 1945 Mad 9.*

5. "Makes any statement which is false".—(1) To establish the offence of giving false evidence direct proof of the falsity of the statement on which the perjury is assigned is essential. *(1926) 27 CriLJ 330 (Lah).*

(2) There must be absolute certainty about the falsity of the statement. *AIR 1924 Pat 276.*

(3) A witness perjures himself not only when he does not state the truth but also when he states something which is not the whole truth. *(1963) 7 FacLR 30 (All).*

(4) Suppression of circumstances is not perjury when the fact stated is true. *AIR 1916 Sind 70.*

(5) It is not sufficient to show that the statement is incredible. It must be shown that it is impossible that the statement made could be true. *AIR 1942 Nag 80.*

(6) A person cannot be punished for being merely rash and careless of facts alleged by him to be true. *AIR 1944 Sind 155.*

(7) A person cannot be punished for having acted without due care and attention. *AIR 1933 PC 124.*

(8) Hearsay evidence cannot be the subject of a prosecution for perjury. *AIR 1936 Lah 828.*

(9) A panch cannot be convicted of perjury merely because his evidence differs from that of the police officer. *(1966) 7 GujLR 439.*

(10) A statement which is inconsistent with a previous statement of the accused on a matter which is not one of pure fact but involves a question of law will not amount to perjury. *(1904) 1 CriLJ 390 (Bom).*

6. Statement must be intentionally false.—(1) In order to sustain an indictment for perjury the prosecution must establish three things: (a) that the statement was false, (b) that it was known or believed by the accused to be false or not believed to be true, and (c) that such statement was made intentionally. *AIR 1954 Orissa 193.*

(2) There can be no offence if the false statement was made without an intention to make it. *AIR 1940 Rang 148.*

(3) If the statement is proved to be false, it may be presumed that the accused intentionally gave false evidence. *AIR 1929 Nag 193.*

(4) While the intention must be clear, it is unnecessary that it should be a corrupt intention. *AIR 1924 Pat 381.*

7. Statements under S. 164, Criminal P.C.—(1) A Magistrate, when taking down statements under S. 164, Criminal P.C., is acting in the discharge of a duty imposed on him by law and is consequently authorised under Ss. 4 and 5 of the Oaths Act to administer an oath to the person examined by him. *(1906) 3 CriLJ 370 (Mad).*

(2) Statements made under S. 164 would be covered by the 2nd para. of S. 193. *AIR 1935 All 341.*

(3) An accused person making a false confession under S. 164, Criminal P.C. cannot be said to have given false evidence. *AIR 1959 AndhPra 567.*

(4) False statement under S. 161, Criminal P.C. made by illiterate person under threat by police—No offence. *AIR 1949 Mad 502.*

8. False statements by accused persons.—(1) A false statement made by an accused person, whether in his statement under Section 342 or under S. 161 or S. 164 of the Criminal Procedure Code, could be the subject-matter of a charge of giving false evidence. *1959 CriLJ 1279 (Andh Pra).*

(2) The immunity granted to accused person from prosecution for giving false evidence continues so long as he is an accused person, whether the case against him is pending in the trial Court or in appeal or where he seeks to file an application in revision. *(1839) ILR 12 Mad 451.*

(3) Under S. 132 of the Evidence Act a witness cannot refuse to answer any relevant question in any Civil or Criminal proceeding on the ground that it will incriminate him. If he gives a false answer he will be guilty of perjury. *(1866-68) 3 Mad HC App 29.*

9. Proceeding not authorised by law.—(1) In order that a person may be convicted of giving false evidence, the false statement must have been made either in a judicial proceeding or other proceeding authorised by law. *(1885) 8 MysLR No. 353 p. 571.*

(2) Where the proceeding itself is one which is not sanctioned by the law any false statement made by a person therein will not render him liable for perjury. *(1913) 14 CriLJ 56 (All).*

(3) The accused could not be convicted for perjury on the ground that the proceeding was unauthorised. *AIR 1944 Cal 283.*

10. Contradictory statements.—(1) Where a witness has made two contradictory statements a charge may be framed alternatively under S. 221 Criminal P.C., and he may be convicted of intentionally giving false evidence although it cannot be proved which of these contradictory statements is false. *(1874) 21 SuthWR 72.*

(2) Where a witness has made two contradictory statements, a charge may be framed alternatively u/s. 221, Criminal P.C. and he may be convicted of intentionally giving false evidence but in such a case, the two statements must be so wholly irreconcilable that one of them must necessarily be false. *AIR 1969 Mys 114.*

(3) Without an alternative charge accused cannot be convicted on the basis of contradictory statements without proof of the falsity of the particular statement for which he is charged. *AIR 1954 All 424.*

(4) The mere fact that a witness has made contradictory statements does not necessarily show that he is guilty of perjury; for there are cases where a person might very honestly swear to a particular fact from the best of his recollection and belief and from other circumstances at a subsequent time be convinced that he was wrong and swear to the reverse without meaning to swear falsely either time. *AIR 1928 Lah 125.*

(5) In order to constitute an offence under S. 193, the false evidence must be given intentionally and knowing that the statement is false. A witness is entitled to a locus penitentiae and an opportunity to correct himself. *AIR 1924 All 83.*

(6) When the witness corrects himself immediately and in the same deposition he is not guilty of perjury. His attention must be drawn to the earlier statement so that he might reconcile the two statements. He must be allowed to correct innocent mistakes as otherwise the object of cross-examination will be frustrated. *AIR 1929 Nag 279.*

(7) If the witness corrects himself immediately, a prosecution for perjury will not lie, for the essence of the offence of perjury is an intention to give false evidence and thus mislead and deceive the Court. *AIR 1929 Nag 279.*

(8) When the accused retracts his false statements only when he discovers that his fraud had been detected such late retraction does not disprove an intention to depose falsely. The real test is whether the witness voluntarily corrected himself due to the realisation of his error or to a genuine feeling of remorse before his perjury was exposed. *AIR 1937 Sind 116.*

11. Pleadings.—Section 191 contemplates declarations which a person is bound by law to make. The most familiar instances of such declarations are plaints and pleadings in suits. A person being under a legal obligation to verify facts in plaints and pleadings is liable to be punished under S. 191 if he verifies falsely. *(1977) 81 CalWN 797.*

(2) Where a person falsely verifies a plaint he will be liable for perjury. *AIR 1917 Cal 269.*

(3) Where a person falsely verifies a written statement he will be liable for perjury. *AIR 1930 All 490.*

(4) Where the law does not require a person to verify a statement but all the same he verifies it unnecessarily, it will not render him liable to punishment. *AIR 1943 Nag 17.*

(5) A, one of the joint decree holders, applied for execution. Against the column "name of the decree-holder" he did not mention the names of the other decree-holders. The application was verified by A. It was held that it cannot be said that the verification was false, as the applicant was not bound to mention the names of all the decree-holders. *AIR 1970 Ker 15.*

12. Affidavits.—(1) The word 'evidence' in S. 191 is not confined to oral evidence only. *AIR 1955 NUC (Cal) 2906.*

(2) An affidavit is 'evidence' within the meaning of S. 191 and a person swearing to a false affidavit is guilty of perjury. *AIR 1930 Oudh 62.*

(3) The definition of the offence of giving false evidence applies to the affidavits. *AIR 1967 SC 68.*

(4) The making of a false affidavit would be an offence even if it was not necessary for the deponent to have made the affidavit. *AIR 1959 SC 843.*

(5) Even an accused person, if he files a false affidavit in support of an application for revision or for a transfer of his case from one Magistrate to another is within the section for the provision in S. 313(2), Criminal P.C., that no oath shall be administered to an accused person has reference only to the statement made by him in answer to questions put by the Court in accordance with S. 313(1). *AIR 1927 Sind 128.*

(6) Where the affidavit is based on information, or on personal knowledge and belief the deponent cannot be convicted unless it can be shown that he knew that it was incorrect and that he deliberately made the statements knowing them to be false. *AIR 1955 All 608.*

13. False evidence given in Court—Section 479A, Criminal P.C.—(1) Section 479A of the Criminal P.C. provides that where a witness intentionally gave false evidence in Court, the Court could, at the time of the judgment or of the final order disposing of the proceeding, record a finding to that effect after giving the witness an opportunity of being heard and make a complaint as provided in that section. Where no finding was given as required by the section, the ingredients of perjury were not satisfied and the complaint was bad. *1970 CriLJ 1046 (Cal).*

(2) Complaint under S. 479A could be ordered only at the time of final judgment or order and not before and only if, after considering the whole evidence and circumstances, it was expedient in the interest of justice and for the eradication of perjury. *AIR 1971 J and K 129.*

14. Deposition—Reading over to witness.—(1) In order to sustain a charge of perjury the statement must be proved to have been made by the accused on oath administered before his deposition was taken by the Court. *AIR 1955 NUC (Cal) 2906.*

(2) In a prosecution for perjury the only evidence that is admissible under S. 91 of the Evidence Act is the statement made on oath. *AIR 1918 Pat 448.*

(3) The recital in a judgment of a statement made by a witness is not the same thing as a record of the deposition of the witness. *AIR 1920 Pat 171.*

(4) Even if the fact be true that the deposition was not read over under S. 360, Criminal P.C. that would only amount to a curable irregularity and in the absence of prejudice which must be disclosed in an affidavit which shows exactly where the record departs from what the witness actually said, there is no point in the objection. Therefore, before prejudice can be substantiated on this score, it must be disclosed by affidavit exactly where the inaccuracy lies. *AIR 1952 SC 214.*

(5) Where a certificate by the Court is endorsed on the deposition that the deposition was read over to the witness and that the witness admitted it to be correct, the Court in a subsequent trial for perjury is bound to accept the certificate to be correct under S. 80 of the Evidence Act until it is proved to be untrue. The burden is on the person seeking to displace the statutory presumption. *AIR 1952 SC 214.*

15. Materiality of the false statement.—(1) The materiality of the subject-matter of the false statement is a necessary factor in the offence of perjury. *(1867) 10 Cox CC 564.*

(2) It is unnecessary to allege or prove that the accused swore falsely to that which was material to the result of the proceedings. *(1956) 21 CutLT 176.*

(3) S. 192 makes materiality an essential part of the offence of fabricating false evidence. *AIR 1949 Nag 303.*

(4) The question of materiality is a relevant consideration in deciding whether a prosecution should be launched at all. *AIR 1946 Nag 38.*

(5) Question of materiality is a relevant consideration in fixing the sentence. *(1938) 42 CalWN 31.*

16. Proof.—(1) In order to convict a person of the offence of perjury it must be shown that the statement said to be false could not but be false. It is not sufficient to show that the probabilities are that the statement was false. *(1906) 4 CriLJ 227 (Cal).*

(2) The prosecution must not only prove the falsity of the statement beyond all reasonable doubt but also show that the accused knew or believed that it was false or did not believe it to be true. *AIR 1919 Lah 158.*

(3) The falsity of the statement cannot be presumed. *(1965) 1 AndhWR 465.*

(4) The falsity of the statement cannot be presumed even if there is a presumption of law against the truth of accused's statement under a statutory provision, e.g., S. 118 of the Negotiable Instruments Act, as to the passing of consideration for a promissory note. *AIR 1920 All 242.*

(5) The circumstantial evidence will be sufficient for a conviction but in such a case where the evidence consists of that of a single person, the Rule as to corroboration may well serve as a safeguard. *AIR 1944 Sind 155.*

(6) It will be unsafe to convict a person of perjury merely because there is some oral evidence showing that his statement is false. *1966 CriLJ 474 (Guj).*

(7) It will be unsafe to convict a person of perjury merely on the basis of the opinion of handwriting experts. *AIR 1924 Rang 17.*

17. Procedure.—(1) Under S. 195(1)(b) of the Criminal P.C. the filing of a complaint by a proper person is a condition necessary to the taking of cognisance of an offence punishable under S. 193, otherwise the Court will have no jurisdiction to enquire into the case at all. *AIR 1942 Mad 326.*

(2) The complaint must not be a general one. It ought to specify the statement which is alleged to be false. *1936 MadWN 464.*

(3) The charge must be specific and must set out the specific answer which is alleged to be false. *AIR 1924 Cal 104.*

(4) Where there are several false statements in the same deposition, it was held that each false statement is a distinct offence and must be separately charged. *AIR 1928 All 706.*

18. Expediency of proceeding for false evidence.—(1) Though it is true that every act of perjury is, in strict law, an offence, it does not follow that on that account, every perjurer should be charged. *AIR 1978 SC 1753.*

(2) Under S. 340 of the Criminal P.C. only when a Civil, Revenue or Criminal Court is of opinion that it is expedient in the interests of justice that an enquiry should be made into such an offence, that a complaint should be made. *AIR 1924 Nag 35.*

(3) Where the accused gave two inconsistent statements before the I.-T. authorities regarding the ownership of some articles and the Magistrate discharged the accused without framing charge it was held that the Magistrate was not entitled to assume that in face of the second statement, the accused would come out with a plea that he purchased the articles subsequent to the date of raid. The

Magistrate was duty bound to frame a charge against accused under S. 191, read with S. 193. *(1983) 2 BomCR 707.*

(4) Where the accused non-petitioner tried to mislead the High Court and tried to obtain an order in his favour by making a false statement in the writ petition and filing a false affidavit in support of the writ petition it is expedient in the interest of justice that an enquiry should be made into the offence punishable under S. 193 of the P.C. *1983 RajLW 153.*

(5) The mere fact that the evidence of the witness resulted in an acquittal of an accused or that it contained contradictions or that the witness made three different statements at three different stages of the proceedings, does not necessarily mean that the witness should be prosecuted. *AIR 1936 Oudh 373.*

19. Abetment of perjury.—(1) The evidence adduced, however, must give notice to the accused of all the facts which constituted the abetment . *AIR 1944 Nag 192.*

(2) In a charge for abetment of an offence under S. 193 the abettor should be proved not only to have intended that the statement should be made but also intended that it should be made falsely. *1893 Rat Un CrC 632.*

20. Other illustrative cases.—(1) In the following cases the accused was held guilty of the offence of giving false evidence. *AIR 1929 All 374.*

21. Civil action in respect of false evidence.—(1) The giving of false evidence no matter how malicious and mala fide it may be, furnishes no right to sue in a Civil Court, the only remedy being a prosecution for perjury. *(1900) 2 BomLR 244.*

22. False evidence or false complaint in foreign Court.—(1) There is no provision in the Code which constitutes it an offence to lodge a false complaint or give false evidence in a foreign Court. *AIR 1924 Bom 51.*

Section 192

192. Fabricating false evidence.—Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".

Illustrations

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in

such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

Cases and Materials : Synopsis

1. *General.*
2. *"Causes any circumstance to exist".*
3. *Making false entry in a book or record or making of a document containing false statement.*
4. *Intention that the fabricated evidence may appear in evidence.*
5. *Abetment of offence under this section.*
6. *Judicial proceedings, etc.*
7. *"Erroneous opinion".*
8. *"Touching any point material to the result of such proceedings".*
9. *Fabrication of evidence for self-protection.*
10. *Offence not compoundable.*
11. *Complaint.*

1. General.—(1) Knowledge of the falsehood of the statement or document is a necessary ingredient of the offence amounts to the "causing of a circumstance to exist" within section 192 *(28 CrLJ 950)*. An accused can only be guilty under section 192 if he had the intention of fabricating evidence in order that it should appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such, or an arbitrator. A judicial proceeding is nothing more or less than a step taken by the Court in course of administration of justice in connection with pending case. For the purpose of section 192 no judicial proceeding need be pending at the time of fabrication. A person is guilty of fabricating false evidence when he makes a false entry in a document intending that it shall appear in evidence and mislead the Judge or Magistrate. The mere fact that the entry is not legally admissible in evidence cannot affect his guilt.

(2) The offence defined in this section contains the following ingredients:

(a) Causing any circumstance to exist or making (a) any false entry in a book or record, or (b) a document containing a false statement.

(b) That such circumstance, false entry or false statement must have been intended to appear in evidence in (i) a judicial proceeding, or (ii) a proceeding taken by law before a public servant or arbitrator.

(c) That such circumstance, false entry or false statement so appearing in evidence, might cause any person, who in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion.

(d) That formation of opinion should be touching any point material to the result of such proceeding.

(3) Fabrication of false evidence is complete as soon as the fabrication is made. Under section 192 the offence of fabricating false evidence is complete as soon as the fabrication is made intending that it may be used as evidence in judicial proceeding. It is immaterial that the judicial proceeding had not been commenced or that no actual use has been made of the evidence fabricated. *Janendra Nath Biswas Vs. Mokbul Hossain Sikder (1959) 11 DLR 359; (1960) PLD (Dac) 19.*

(4) Fabrication of false evidence. Prosecution must prove not only fabrication of false evidence but must further prove that it was to use it in any judicial proceeding. Mere likelihood of doing so in future is not enough. *Nurul Hoq Vs. State (1958) 10 DLR 129.*

(5) Before an act can be said to come within the scope of this section it is essential to establish:

Firstly,—

(a) that the accused caused any circumstance to exist, or

(b) made any false entry in a book or record, or

(c) made a document containing a false statement;

Secondly, that the accused intended that such circumstance, false entry or false statement may appear in evidence:

(a) in a judicial proceeding, or

(b) in a proceeding taken by law before a public servant, or

(c) before an arbitrator;

Thirdly, that the accused intended also that such act may cause any person who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion; and

Fourthly, that such erroneous opinion was one touching any point material to the result of such proceeding. *AIR 1937 Cal 42.*

(2) Swearing to a false affidavit amounts to fabricating false evidence. *AIR 1970 Ker 15.*

(3) In contrast with this section, S. 218 which also deals with the preparation of a false record is concerned with the preparation of such record by a public servant. Further, the false record under S. 218 is prepared for the purpose of saving a person from punishment or a property from forfeiture. *AIR 1968 SC 19.*

2. "Causes any circumstance to exist".—(1) A caused stolen property to be concealed in the field of one S intending that it might be found there, that the circumstance might appear in a judicial proceeding and that this circumstance might lead the Court to believe that S was connected with the theft. It was further proved that A voluntarily assisted in concealing or disposing of the property which he knew to be stolen. It was held that A was guilty under this section. *(1875-77) ILR 1 All 379.*

(2) A who had borrowed money from B wrote to B that he would be sending money to B in a registered cover. He subsequently actually sent a registered and insured cover which did not contain any currency notes but Khilafat bonds having no money value. It was held that if A had thereby intended to create evidence to bolster up a defence of payment, if a suit was filed against him by B he would be guilty of fabricating false evidence. *AIR 1924 All 205.*

(3) A owed B a certain amount. He sent to B a registered and insured letter purporting to contain currency notes but, really containing waste paper, and in the suit which B filed for recovery of the debt A applied to Court to admit the postal acknowledgment of the insured cover, in evidence. It was held that A was guilty under this section. *AIR 1927 Mad 199.*

(4) A requested the Magistrate trying a case against A's brother B to arrange for an identification of B by prosecution witnesses. The Court assented to this request and A produced before the Court a number of persons. One of them was a person who was made to personate B. The result was that the witnesses failed to identify him. **Held** that A had committed an offence defined in this section. *(1907) 5 CriLJ 285 (286) (All).*

(5) The turtoring of a man to give false evidence amounts to the causing of a circumstance to exist within the meaning of this section. *AIR 1927 All 721.*

3. Making false entry in a book or record or making of a document containing false statement.—(1) The forging of an endorsement on a promissory note for the purpose of saving limitation would be a fabrication of false evidence. *AIR 1933 Mad 413.*

(2) Fabricating a false diploma to support one's claim to be a qualified criminologist will be an offence under this section when the fabrication is made with the object of using it when necessary, in Court while giving evidence as an expert witness. *AIR 1966 SC 523.*

(3) It is not necessary for the commission of the offence of fabricating false document that the document should contain in express terms the false statement. It is sufficient if the document contains false recitals which imply such a false statement. *(1906) 3 CriLJ 196 (198) (DB) (Cal).*

(4) An entry or a statement making a material omission may amount to fabrication of false evidence. *AIR 1965 Mad 100 (101) : (1965) 1 CriLJ 311, A 1937 Cal 42(44) : 38 CriLJ 700 (DB).*

(5) The making of a false affidavit may fall within this section as well as section 191. *1973 CriLJ 1284.*

4. Intention that the fabricated evidence may appear in evidence.—(1) The mere making of a false document is not fabrication of evidence under this section. There must, at the time of making it, be an intention that it should appear in evidence. *(1947) 48 CriLJ 632.*

(2) Proximity to a judicial proceeding pending or likely to come into existence is a test by which the applicability of the section is to be determined. *1970 AllCriR 263.*

(3) An attestation of a false document without knowing that it was a false document is not an offence under this section. *AIR 1919 All 316.*

(4) The attestation of the service of summons on a wrong person is not an offence unless the accused was aware that the service was being effected on a wrong person. *AIR 1919 Pat 528.*

(5) Where an identifier swore a false affidavit intended to be used in a judicial proceeding although no affidavit was required from the identifier it was held that the offence under this section had been committed. *AIR 1928 Pat 161.*

(6) The word 'evidence' in this section is not the same as the evidence defined in S. 3 of the Evidence Act and confined to something adduced before a judicial or quasi judicial authority but will include evidence before any person including a public servant. *1960 KerLJ 1307.*

(7) The fabrication of a document which is inadmissible in evidence is not an offence under this section. *AIR 1919 Cal 430.*

(8) A question of law whether to enter a false record in a police diary can be said to be fabricating evidence at all, especially as clauses 162 and 172 Criminal P. C. appear to negative the admissibility of the entry as evidence save for the purpose of contradicting a witness whose statement is recorded in writing, or of contradicting the police officer himself, was left open. *AIR 1933 PC 124.*

(9) It is the intention that creates the offence under this section and the mere fact that a document would be ultimately inadmissible in evidence does not necessarily take it out of the mischief of S. 193 of the Code. *AIR 1940 Cal 449.*

5. Abetment of offence under this section.—(1) Where A fabricates evidence by making a false document and B attests it. B may be guilty of abetment of the offence. If, in addition B knows that the document is intended to be used for the purpose for which it was made, he would be guilty also under S. 193 of the Code of fabricating false evidence. *AIR 1942 Mad 92.*

(2) It is not necessary, in order to constitute the attestation, an abetment of the offence of fabricating false evidence, that the document should require to be attested provided the person who brought the false document into existence intended that it should be attested and that the accused should be one of the attestors. *AIR 1942 Mad 92.*

6. Judicial proceedings, etc.—The words "judicial proceedings" can be interpreted as "nothing more or less than a step taken by the Court in the course of administration of justice in connection with a case pending". *(1864-65) 2 MadHCR 43.*

(2) It is not essential for the purpose of this section that there should be any judicial proceeding pending at the time of the fabrication. It is enough that there is a reasonable prospect of such a proceeding having regard to the circumstances of the case and that the document is intended to be used in such a proceeding. *AIR 1926 Cal 224; CriLJ 49 (DB); AIR 1921 Cal 226(227)(DVB).*

(3) The mere idea in the mind of anybody that some document might at some future date be used in some judicial proceeding would not be sufficient to bring him within the ambit of this section. *(1936) 40 CalWN 313.*

(4) An enquiry under S. 476 of Criminal P.C., 1898 has been held to be a judicial proceeding. *(1909) 9 CriLJ 41 (Mad).*

(5) A Third Class Magistrate's recording of statement under S. 164, Criminal P.C., when the Magistrate had no authority to carry on the preliminary enquiry is not a stage of judicial proceeding. *AIR 1921 Bom 3.*

(6) Proceedings initiated by an application for execution of a decree have been held to be judicial proceedings for purposes of S. 476 Criminal P.C., and S. 193 of the Code. *AIR 1945 Mad 9.*

(7) Proceedings before Debt Settlement Board are not judicial proceedings. *AIR 1940 Cal 286.*

(8) When a Magistrate, after dismissing the complaint of the complainant called the two doctors who had given injury reports with reference to the same man, and recorded their statement and decided to order the filing of a complaint against one of the doctors under S. 193 of the Code, it was held that the recording of the statement after the dismissal of the complaint is not a judicial proceeding. *1966 AllWR (HC) 761.*

(9) Where it appeared to the District Magistrate from police papers that the accused had persuaded one X to make a false statement during the investigation, it was held that the statement had not been made in any judicial proceeding. *AIR 1915 All 388.*

(10) A person made a statement before the District Magistrate against a particular police officer but expressly stated that he is not making a complaint. But the District Magistrate administered oath to him whereupon he repeated the statement which was found to be false. The trial Court convicted that person under S. 193 for giving false evidence in a judicial proceeding. In appeal it was held that the statement made before the Magistrate was not in his judicial capacity but only as the head of the police and hence, no offence under S. 193 has been committed. *(1913) 14 CriLJ 56 (All).*

(11) Where the re-hearing of the suit (at the instance of a party set ex-parte but against whom the suit was dismissed) itself was ultra vires and illegal, a false statement made therein was held not to be so made in the course of a judicial proceeding within the meaning of this section. *(1911) 12 CriLJ 373.*

(12) This section is not restricted to judicial proceedings only but applies to proceedings other than judicial. *1960 KerLJ 1307.*

(13) Where a person relies on false statements in his account books in an enquiry before the Income-tax Officer he is guilty of an offence punishable under S. 193. *(1937) 20 NagLJ 214.*

(14) The bringing about of fraudulent and false entries in electoral rolls was held to be punishable under S. 193. *AIR 1934 Cal 838.*

7. "Erroneous opinion".—(1) Where a person altered the date of the bond in order to bring it within the period allowed by the law for registration, it was held that it was clear that the intention of

the person in altering the date was to cause the registering officer to entertain an erroneous opinion touching a point material to the result of the registration proceedings and that hence the act constituted the offence of fabrication of false evidence. *(1881) ILR 6 Cal 482.*

(2) The offence is not made out when the fabricated evidence does not lead to the forming of an erroneous opinion, but rather to a correct opinion. *AIR 1918 All 326.*

(3) Where the accused was not aware that the statement in a document attested by him was false, he cannot be held to intend that the statement should lead to the formation of an erroneous opinion by the person before whom the document is produced as evidence, and hence, he cannot be held in such a case to have committed the offence of fabrication of false evidence. *AIR 1919 All 316.*

8. "Touching any point material to the result of such proceedings".—(1) The fabricated false evidence must be such as to lead the judge or other public servant or arbitrator to entertain an erroneous opinion touching a point which is material to the result of the proceeding. If it merely causes the formation of an erroneous opinion on a point which is immaterial to the result of the proceeding, this section will not apply. *AIR 1956 Pat 154.*

(2) Where a fabricated evidence is with reference to a point which is not relevant to the question on which an opinion is to be formed, it cannot be said to be material to the result of the proceeding and is not within this section. In this respect this section differs from S. 191 which does not require that the false evidence given should be material to the result of the proceeding. *AIR 1949 Nag 303.*

(3) Where the judge or public servant or arbitrator has no authority or jurisdiction to form an opinion on a particular mater, the fabrication of evidence which may lead to an erroneous opinion by such person on such matter cannot be said to be material to the result of the proceeding before him and is not within this section. *1960 KerLJ 1307.*

9. Fabrication of evidence for self-protection.—(1) If A, after having stabbed Z, in order to escape detection disposes of Z's body in such a manner as is likely to lead a jury to think the death accidental, the Court cannot punish A as the fabricator of false evidence. *AIR 1935 Cal 304.*

(2) An accused person cannot escape the penalty under S. 193 for fabricating false evidence, merely on the ground that he is an accused person. *AIR 1934 All 1017.*

(3) While the mere intention to divert suspicion and conceal one's guilt need not necessarily amount to fabrication of evidence which may appear in a proceeding such as is referred to in the section a fabrication, with intent that it may appear in such a proceeding will fall within this section although there may also be object of screening himself from detection. *AIR 1914 All 337.*

(4) Where the accused placed the wet clothes of a woman on the river bank with the intention that the investigating officer should form an opinion that the woman was drowned, it was held that the accused was guilty under S. 193 of fabricating false evidence. *AIR 1928 Bom 130.*

10. Offence not compoundable.—(1) The offence of fabricating false evidence under S. 193 is not a matter of private dispute and is not compoundable. Where a Magistrate making a preliminary inquiry into a charge of fabricating false evidence tried to get the dispute amicably settled, it was held that the Magistrate was misdirected in doing so. *AIR 1936 Sind 146.*

11. Complaint.—(1) The procedure for giving complaints is laid down in Ss. 340 and 344 of the Criminal P.C. *1966 CriLJ 834.*

(2) A proceeding before an Income Tax Officer is a proceeding in a Court within the meaning of S. 195(1)(b) of the Criminal P.C. and a complaint by the Income Tax Officer is necessary before taking cognizance of an offence under S. 193. *AIR 1964 SC 1154.*

(3) Prosecution for perjury should be sanctioned by Courts only in those cases where it appears to be deliberate and conscious and the conviction is reasonably probable or likely. *(1975) 41 CutLT 841.*

Section 193

193. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial [2][* * *] is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Cases and Materials : Synopsis

1. ***Scope.***
2. ***"Intentionally".***
3. ***Giving false evidence.***
4. ***Fabricating false evidence.***
5. ***Materiality of the evidence.***
6. ***"In any stage of a judicial proceeding".***
7. ***"In any other case"—Second para.***
8. ***Complaint.***
9. ***Charge.***
10. ***Proof and conviction.***
11. ***Sentence.***
12. ***Appeal and revision.***
13. ***Procedure.***
14. ***Practice.***

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2. The words "or before a Military Court of Reaquest" were repealed by the Cantonments Act, 1889 (XIII of 1889), act XIII of 1889 was repealed by the Cantonments Act, 1910 (XV of 1910) which in turn has been repealed by the Cantonments Act, 19240.

1. Scope.—(1) Prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given. The Court is bound to satisfy itself that there is at least a prima facie case and that there is a reasonable prospect of a successful termination of the prosecution and that a prosecution is necessary in the interest of justice *(12 CrLJ 446)*. The statement must be intentionally false in order to justify a prosecution *(3 CrLJ 45)*. Para 1 of this section applies to false evidence given in judicial proceedings whereas para 2 applies to perjury generally. "Intention" forms the most essential ingredient of the offence of perjury under the section. Whether a person can be said to have intentionally given a false evidence within the meaning of section 193, Penal Code is a pure question of fact (*AIR 1948 Sind 76*). "Intention" may be proved either directly from the existence of certain facts and circumstances or it may be inferred from statement *(PLD 1957 Pesh 142)*. Where the intention to make a false statement is not proved, the accused cannot be convicted under this section and in such a case, no sanction for prosecution should be given. In order to convict a person under section 193 of the Penal Code the prosecution must not only prove that the accused fabricated false evidence but it must also prove that in fabricating those documents he intended that the documents may be used in any stage of judicial proceeding *(10 DLR 129)*.

(2) Where a person denied having made a particular statement to a police officer in whose dairy it was found, it could not be said that the person had any intention of its being used as evidence in any stage of judicial proceeding under section 162, CrPC. It could be used only for contradicting the police officer and therefore prosecution for perjury was not sustainable *(7 CrLJ 3)*.

(3) Where the Court orders an applicant to prove his allegations by affidavit and in consequence he swears an affidavit and files it before the Court he is bound under section 14, Oaths Act to state the truth in it and by failing to do so he commits the offence under section 193. Where an identifier swore a false affidavit intended to be used in a judicial proceeding although no affidavit was required from the identifier, it was held that the offence of fabricating false evidence committed within the meaning of section 193 (*29 CrLJ 111)*. A statement not made on oath cannot be made the subject matter of prosecution under this section *(AIR 1916 Sind 34)*. A prosecution ought not to be ordered unless the statements are absolutely irreconcilable with each other *(1929 Cal 390)*. An accused person cannot be charged either with giving or fabricating false evidence with the sole objects of diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged.

(4) The Tribunal shall have the same powers as vested in a Civil Court for the purpose of inquiry and every enquiry as such shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 of the Penal Code—A tribunal shall be deemed to be a Civil Court for the purpose of sections 480 and 482, CrPC. Tribunal manner of acceptance of the case on a matter in which amicable settlement was reached between the parties out of their free will and without prejudice to any one. In our view after effecting the compromise there was nothing for adjudication in the case. *42 DLR 201*.

(5) Allegation stated in the complaint petition that the appellants filed a Civil Suit being OS No. 112/82 and obtained an ex parte decree from the court of Sub-Judge, Rangpur to the effect that a deed of gift executed on 21-6-80 by the respondent's late husband was forged, collusive and void as it was obtained by giving false evidence making false statement and false personation. The alleged offences have been committed in relation to a proceeding in the Civil Court and no court is competent to take cognizance of an offence mentioned in clause (b) of section 195, CrPC except on a written complaint by the Court concerned. The refusal of the High Court Division to quash the proceeding in question is not justified. *7 BCR (AD) 94*.

(6) The petition of complaint discloses no offence under the various sections of the Penal Code of which cognizance has been taken. Cognizance has been taken against the accused petitioner under sections 193/207 of the Penal Code. Allegation by the complainant that accused has no subsisting interest in the property in question thus raises a question of civil dispute, not a criminal issue. Criminal courts are not to be utilised for adjudication of civil disputes. Court strongly disapproves resort to criminal proceeding for harassing a person with motive of settling civil disputes. Questions of fact are to be tried on evidence by the trial Court. *39 DLR 214.*

(7) It must be proved that false evidence was given intentionally. Conviction cannot be sustained without a clear finding as to that, "Intention" forms the most essential ingredient of an offence of perjury under S. 193, Penal Code. For a conviction under this section it is not enough that a certain statement made by a witness should be false, but it also must be proved positively that false statement was made "intentionally". "Intention" may be proved either directly from the existence of certain facts and circumstances, or it may be deduced from the existence of certain facts and circumstances, or may be deduced from the contradictory statements. For the conviction of an accused person on a charge of perjury a clear and distinct finding must be given, that he "intentionally" made a false statement, and in the absence of such a finding, the conviction cannot be sustained. *10 DLR (WP) 5.*

(8) Fabrication of false evidence—prosecution must prove not only fabrication of false evidence but must further prove that it was to use it in any judicial proceeding. Mere likelihood of doing so in future is not enough. *10 DLR 129.*

(9) If a court finds that any witness committed an offence under section 193, the court is to proceed in accordance with the provisions of section 476 of the Code of Criminal Procedure because the offence under section 193 is included in section 195(1)(b) of the Code. *Idris Miah (Md.) Vs. State 50 DLR 629.*

(10) The commission of offence under sections 193/212 of the Penal Code do not depend upon the acquittal or conviction of the original accused person for whom the false evidence was given or sought to be screened from punishment and hence the submission of the learned Advocate for the petitioner that the learned Special Judge ought to have waited till conclusion of the trial or that the original accused persons were found guilty and were convicted in spite of the deposition of the petitioner and as such the proceeding against them are premature, have got no substance. *Masudur Rahman (Md.) Vs. State (Criminal) 5 BLC 286.*

(11) Offence under sections 193 & 467 are offences of the same kind. *Abdus Sobhan Vs. Crown (1955) 7 DLR 566.*

(12) Accused filled 2 insured covers insured for Rs. 1200-0-0 with blank sheets and attempted to despatch them through the post office—Attempt failed—Contents discovered by the post office. Offences under sections 193/511 not made out. *1954 PLD (Dac) 483.*

(13) The first paragraph of this section prescribes the punishment for intentionally giving false evidence in a judicial proceeding or fabricating false evidence for the purpose of its being used in a judicial proceeding. The second paragraph of the section prescribes the punishment for intentionally giving false evidence or fabricating false evidence, in any case, other than a judicial proceeding. *AIR 1958 Mad 69.*

(14) Statement of oath falsely supporting a prosecution case against an accused person more appropriately amounts to an offence under Ss. 193 and 195 and not under S. 211. *AIR 1973 SC 2190.*

(15) "Fabricating false evidence for the purpose of being used in a judicial proceeding" would include not only a judicial proceeding in existence when the offence is committed but also such judicial proceedings as are foreseen. *(1907) 6 CriLJ 162.*

(16) Where the proceedings under S. 193 of P.C. were pending in the Court since 9 years and were still at initial stage, it was held, that it was imperative to quash these proceedings for securing ends of justice. *(1984) 1 ChandLR (Cri) 248.*

(17) In U. S. A., the Fifth Amendment privilege grants a right to a witness to refuse to answer self-incriminating questions and to remain silent that does not mean that she is endowed with a licence to commit perjury. *1978 CriLJ 161.*

(18) A convicted person cannot assert a claim for damages against a police officer or any other witness for giving perjured testimony at his trial. *(1983) 75 LEd 96. (USSCR).*

2. "Intentionally".—(1) Intention is an essential ingredient of the offence under this section. *1966 AllWR (HC) 761.*

(2) False evidence may be said to be given intentionally if the person giving it does so advisedly, knowing it to be false, and with the intention of deceiving the Court and of leading it to suppose that that which he states is true. *(1977) 81 CalWN 797.*

(3) The intention can only be gathered from the surrounding circumstances. *AIR 1940 Cal 449.*

(4) Where the accused were charged for fabricating a document purporting to be a kabuliyat executed by them in favour of the complainant and the document contained a false recital to the effect that the landlord (complainant) had agreed to accept the document and to grant a lease of the lands, to which it related, to the accused, it was held that the offence under this section was established and that the question whether it was the intention of the accused to use the document in a judicial proceeding was one of inference. *AIR 1921 Cal 224.*

(5) Where the accused, having failed to obtain a certain woman in marriage, executed a document purporting to convey certain lands to the woman by way of dower and described her therein as his wife and it was found that the object of the accused was only to secure the person of the woman, which he could do only by judicial proceedings, it was held that his intention was to use the document in such proceedings and that he was therefore guilty of an offence under this section. *AIR 1921 Cal 226.*

(6) The accused executed a sale-deed in favour of his wife, and before the registration thereof executed a mortgage of the same property in favour of F. F made enquiries in the registration office and being satisfied that there was no encumbrance got the mortgage deed registered. The sale-deed was subsequently registered and F coming to know of this gave a complaint against the accused for cheating. In that case the mortgage deed was produced by F. There was no endorsement of discharge on it at that time. But at the time of the trial it was found that the mortgage deed had an endorsement of discharge. The accused was therefore charged for fabricating false evidence and forgery and he was held to be guilty. *AIR 1914 All 337.*

(7) Where an affidavit prepared and read out was signed by the accused while he was drunk and he was subsequently charged for perjury, it was held that there was no intention to give false evidence. *AIR 1940 Rang 148.*

(8) Discrepancies in evidence due to confusion of mind or failure of memory cannot be regarded as false evidence given intentionally. *AIR 1918 Cal 106.*

(9) A person signing a report without reading it cannot be said to know that the report was false and cannot be punished for an offence under this section. *AIR 1919 All 316.*

(10) Statement capable of a reasonable construction which would negative the intention of giving a false statement cannot be said to be an intentional giving of false evidence. *AIR 1924 Pat 381.*

(11) Accused making allegation as per bond, of oral partition in plaint in former suit—Accused stating on oath in later suit that there was no partition. Allegation of oral partition found not necessary for getting decree in former suit—Further the allegation was found to be recklessly made—Held, the statement was not intentionally false. *AIR 1954 Orissa 193.*

3. Giving false evidence.—(1) A false affidavit attested by a person who had no legal authority to administer oaths is not an offence under this section. *(1972) 74 PunLR 521 (DB).*

4. Fabricating false evidence.—(1) Where during pendency of proceeding for assessment of compensation under Land Reforms Act, the accused persons who were employees of the Land Reforms Office submitted false and collusive reports and made interpolations in collectible demands and altered Touzi number for facilitating false payment to land owner, that will amount to fabricating false evidence, more so when ad interim payment of compensation in excess was actually made to the land owner. *1975 CriLJ 1939.*

(2) A document is false if among other things it bears a false time or place of making or if it purports to be made by A on behalf of some one who did not make it nor did he authorise its making at a particular time—On facts pro-notes used in income-tax assessment proceedings were held fabricated. *(1983) 15 Tax Law Rev 344 (MP).*

5. Materiality of the evidence.—(1) In order to constitute the offence of giving false evidence under this section, it is not necessary that the false statement should be material to the case. *(1955) 21 CutLT 176.*

6. "In any stage of a judicial proceeding".—(1) In a prosecution for an offence under the first paragraph of this section, it must be proved that the accused gave false evidence in a stage of a judicial proceeding. *(1870) 13 SuthWR (Cr) 56.*

(2) To punish one under this section, it has to be proved that one had intentionally given false evidence in any stage of the judicial proceedings. Whatever is stated either during investigation or in the first information report does not constitute substantive evidence and such a statement could not be made the foundation of judging the correctness or the falsity of the deposition made by a witness during the course of trial, which are judicial proceedings. *1981 JabLJ 122 (MP).*

(3) The following proceedings have been held to be judicial proceedings for the purposes of this section:

(a) Proceedings before the Income-tax Officer under the Income-tax Act, 1922. *AIR 1964 SC 1154.*

(b) Under the Income-tax Act, any proceeding before the income-tax authority is a judicial proceeding for the purposes of Ss. 193 and 228 of this Code. *1975 MadLJ (Cir) 263.*

(c) Mutation proceedings. *AIR 1966 All 124.*

(d) Enquiry by Magistrate before making an order u/s. 144, Cr. P. C. *(1896) ILR 19 Mad 18.*

(e) Proceedings under S. 83. T. P. Act. *AIR 1947 Pat 37.*

(f) Bailiff's affirmation before a Judge regarding service of summons. *(1897) 2 Mad HCR 43.*

(g) Official Assignee examining the insolvent under the Insolvency Act. *AIR 1958 Mad 69.*

(h) Enquiry by an Officer of the Railway Protection Force under Section 9, Railway Property (Unlawful Possession) Act, *1970 All Cri R 437.*

(i) Proceedings before Rent Controller under the Rent Restriction Act. *AIR 1971 Punj 150.*

(j) If false evidence in the form of affidavit filed by the accused was given before Rent Control Officer, a civil court for the purpose of S. 193, P.C. that being a judicial proceeding S. 195(1)(b)(i) would be attracted. A complaint by the court is a pre-condition for taking cognizance of such offence by any criminal court. *AIR 1982 SC 1238.*

(k) Proceedings before the compensation officer under Chapters V and VI of the Land Reforms Act, 1950. *1975 CriLJ 1939.*

(4) Deputy Commissioner acting under the Schools (Security of Service) Act, does not sit on a Court and he will not be competent to file a complaint under S. 193. *(1975) 2 CriLT 409 (Punj).*

(5) Application filed by respondent claiming tenancy on basis of fabricated lease deed dismissed by land tribunal formed under Land Reforms Act—Complaint filed against respondent by alleged executor of lease deed for offences u/ss. 193, 409, and 423 of P. C.—Maintainable—Complaint as contemplated by sub-sec. (1) of S. 195 by Tribunal, not necessary. *1980 KerLT 913.*

7. "In any other case"—Second para.—(1) The following cases may serve to illustrate the scope of the words "in any other case":

(a) A purchased stamp papers for a conveyance which fell through. He wanted to apply to the Collector for refund of the stamp duty and took the advice of B. B gave the advice that the application should have been made within two months and as that period was over, A might alter the date of the stamp paper. A altered the date. This was unnecessary as the time for applying was six months and not two and the application was made within that period. It was held that A was guilty of an offence falling under the second para of this section and B was liable for abetment of the same offence. *AIR 1918 Cal 61.*

(b) A public servant, in charge as such of certain documents lost them. He was asked to produce them and being unable to do so fabricated and produced similar documents with the intention of screening himself from punishment. It was held that he was guilty of an offence under this section. *(1883) ILR 5 All 553.*

(c) An officer conducting a sale under the Civil P. C. is bound by law to return the warrant of sale certifying the manner in which the warrant of sale has been executed. If he makes a false declaration in his return of the warrant, he is guilty under the second para of this section. *1 Weir 155.*

(d) Where the accused was charged with having given false evidence before a third class Magistrate under Sec. 164, Criminal P. C., he might be convicted, if the offence is proved under the second para of this section. *(1900) ILR 22 All 115.*

(2) Issuing a copy containing something in addition to what was in the original as a true copy—Offence under S. 193 was held to have been committed. *1971 RajLW 392.*

8. Complaint.—(1) Under S. 195, Criminal P. C., no Court shall take cognizance of any offence punishable under this section when such offence is alleged to have been committed in, or in relation to any proceeding in any Court except on a complaint in writing of such Court or of some other Court to which such Court is subordinate. *AIR 1968 SC 1921.*

(2) A private complaint is incompetent. *AIR 1968 SC 19.*

(3) Complaint of a Court is not necessary, if the offence is not alleged to have been committed in or in relation to any proceeding of any Court. *AIR 1959 All 14.*

(4) The procedure for making the complaint is provided for in S. 340, Criminal P. C. Whether a preliminary enquiry under S. 340, Criminal P. C. is necessary, is in the discretion of the Court and depends upon the facts and circumstances of each case. *AIR 1955 All 105.*

(5) A complaint should not be ordered to be filed unless the Court is of the opinion that it is expedient in the interests of justice that an enquiry should be made into an offence falling under this section. *AIR 1963 Orissa 179.*

(6) The proceedings under S. 340, Criminal P. C., should not be taken until the case in which the false evidence was given or for use in which the false evidence was fabricated has been finally decided. *AIR 1969 SC 355.*

(7) As regards the prosecution of any person, appearing before a Court as a witness, for giving false evidence or for fabricating false evidence S. 479A, Criminal P. C. (5 of 1898) engrafted an exception to S. 476 of that Code. In such a case subs, (6) of Section 479A excluded the applicability of 'Sections 476 to 479 of that Code and provided a special procedure. *AIR 1967 SC 68.*

(8) The application of S. 479A was confined to a person appearing as a witness before the Court. To a person who merely filed a false affidavit or false statement Section 479A would not apply. *AIR 1967 All 420.*

(9) Where the facts stated in a private complaint amount to an offence under this section, it is not open to the complainant to evade the provisions of S. 195, Criminal P. C. and to say that he would confine his case to a lesser offence for which no complaint by Court is necessary. *AIR 1966 SC 523.*

(10) When a person in the course of his evidence defames a third party and the said statement is false, the party affected may file a complaint for defamation without the necessity of a complaint by Court. *AIR 1951 Mad 34.*

(11) Accused abetting offence of forgery—Forged document not put in evidence against him in redemption suit against him—Section 193 not attracted—Complaint by Court as envisaged by S. 195(1)(b), Cr.P.C.—Not necessary for prosecuting him under S. 467, read with S. 114. *AIR 1981 SC 1417.*

(12) I. T. Return with claim for exemption—Assesses alleged to have made false affidavit in respect of his claim—Complaint by I.T.O.—No preliminary enquiry by I.R.O.—Opportunity of hearing not given to assessee—Action of I.T.O. held, violative of principles of natural justice and complaint was bad in law even if false affidavit attracts Ss. 193, 196, P.C. *1983 TaxLR 1449.*

(13) Complaint in writing of the Court before which the offence is committed, or of some other Court to which such Court is subordinate, is required under section 195, CrPC.

9. Charge.—(1) In a prosecution for perjury under this section it is essential that the charge should set out the exact words alleged to be false as definitely and specifically as possible. *(1894) 17 MysLR No. 548 p. 756.*

(2) The object is to give notice not only to the accused, but also to the trying Court of specific offences against the accused. *AIR 1918 Pat 448.*

(3) The charge should also contain the word "intentionally" before the words "give false evidence". *(1862) 2 SuthWR Letter 1.*

(4) Where several persons are accused of giving false evidence in a judicial proceeding, each of them ought to be separately charged and tried. *AIR 1923 Lah 89.*

(5) Where in the course of evidence, a witness makes several false statements on different subjects, each of such false statements constitutes a separate offence. *AIR 1928 All 706.*

(6) The failure to state in the charge actual words alleged to be false evidence is an irregularity curable under S. 465, Criminal P. C. *AIR 1923 Nag 39.*

(7) The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, being summons as a witness in—being a judicial proceeding then pending before the—and being bound to state the truth intentionally gave false evidence (state here the false statement which statement you either knew or believed to be false or did not believe to be true), and thereby committed an offence punishable under section 193 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

10. Proof and conviction.—(1) In a case under this section the prosecution must prove beyond all reasonable doubt that the statement made by the accused is false. *AIR 1934 Pat 133.*

(2) The prosecution must show conclusively that the statement is false. *AIR 1936 Pesh 106.*

(3) Last words used must be proved. No evidence which does not profess to give the exact words can be a safe foundation for a conviction. *(1875) 23 Suth WR (Cr) 28.*

(4) Where a charge for perjury is based upon two contradictory statements every possible presumption in favour of their reconciliation should be made. *AIR 1914 Sind 115.*

(5) According to S. 134 of the Evidence Act even the evidence of a single witness is sufficient for convicting a person of perjury. *AIR 1931 All 362.*

(6) In a prosecution for perjury where the alleged false evidence has been taken down in a deposition, a certified copy of the same must be filed and proved. Oral evidence or the substance of the deposition is not admissible under S. 91 of the Evidence Act. *AIR 1918 Pat 448.*

(7) An accused charged under this section can be convicted of the abetment of the offence if so found. *AIR 1944 Nag 192.*

(8) In the following cases the charge was under one section and the offence as proved was found to fall under another section. *AIR 1962 All 150.*

(9) Complaint against partners of the firm for filing false income-tax returns and statements of accounts on the ground that the transactions mentioned in Bahi which was subsequently recovered in a raid from the firm were not mentioned in their return—No seizure memo of Bahi was prepared—Alleged recovery of Bahi and contents of that Bahi were not duly proved by leading any legal evidence—**Held,** charges under S. 277 I.T. Act and S. 193. P.C. were not proved. *(1983) 139 ITR 681.*

11. Sentence.—(1) A deliberate false statement made in a Court which tends to endanger the life and property of others or to defeat and impede the progress of justice is not an offence which should be lightly passed over, and a deterrent sentence ought to be given. *AIR 1940 Nag 410.*

(2) In such a case of an offence falling under S. 191 and this section, while the materiality of the subject-matter of the statement is not an essential ingredient of the offence, it may have a bearing upon the sentence to be passed. *AIR 1949 Nag 303.*

(3) This section provides for imprisonment and fine and therefore a sentence of imprisonment with the alternative of fine is not in accordance with this section. *1933 Mad WN 896.*

(4) Submission of false statements and verification by assessee—Assessment of income by accepting revised return—Lapse of 14 years since the date of offences—Imposition of penalty meanwhile by department—Sentence of imprisonment for offence punishable under S. 277 I.T. Act—Not necessary—However in circumstances sentence of fine imposed for offence under S. 193, P.C. enhanced. *1982 TaxLR 57(59): 1981 TINJ 245 (Mad).*

(5) A benefit of the Probation of Offenders Act cannot be given to a person who is above 18 years of age and is convicted for offence under S. 193 of the Penal Code. Sentence of 3 months R. I and fine of Rs. 500.00 was awarded. *(1983) 15 Tax Law Rev 418.*

12. Appeal and revision.—(1) Where an accused appealed against a conviction under this section and in appeal raised the point that the prosecution had failed to prove the intention requisite for the conviction, the appellate Court after hearing the arguments on the issue took further evidence and found that the requisite intention was proved, it was held that the appellate Court could do so. *(1947) 48 CriLJ 632 (Cal).*

(2) No appeal lies against an order for prosecution made in respect of perjury committed in an administrative inquiry. *AIR 1929 All 936.*

(3) The High Court can interfere under Section 482, Criminal P.C. if the complaint suffers from some legal defect. *1977 CriLJ 1632.*

13. Procedure.—(1) Where an offence falls under this section and not S. 471, the procedure under Section 479A of Criminal P. C. must be followed and not the procedure under Section 476 and 476A. *1971 CriLJ 1574.*

(2) Where any Court decides in accordance with S. 340, Criminal P.C., to have a preliminary enquiry into any offence under S. 193, Penal Code it is highly desirable and indeed very necessary that the portions of the witness's statement in regard to which the accused has, in the opinion of the Court, perjured himself should be specifically set out in or form annexure to the notice issued to the accused so that he is in a position to furnish an adequate and proper reply in regard thereto and be able to meet the charge. *AIR 1978 SC 1753.*

(3) Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate, Magistrate of the first class. For giving or fabricating false evidence in any other case—Triable by Metropolitan Magistrate, Magistrate 1st class or second class.

14. Practice.—Evidence—Prove: (1) That the accused was legally bound to state the truth, either by an oath or by an express provision of law. or that the accused made the declaration in question.

(2) That he made such statement or declaration whilst so bound.

(3) That such statement, or declaration, was made in a stage of a judicial proceeding:

(4) That the statement or declaration is false.

(5) That the accused when making such statement or declaration, knew it to be false, or believed it to be false, or did not believe it to be true.

(6) That he made such false statement intentionally.

Prove the following points for fabricating false evidence:

(1) That the accused (a) caused a certain circumstance to exist, or (b) made the false entry, or (c) made the document to contain false statement.

(2) That he did as in (1) intending that such circumstance, entry , or statement should appear in evidence (a) in a judicial proceeding, or (b) in a proceeding taken by law, before a public servant, or (c) in a proceeding taken by law, before a public servant, or (d) in a proceeding before an arbitrator;

(3) That the person conducting the judicial or other proceeding had to form an opinion upon the evidence in which such false evidence appears.

(4) That the accused intended that person to entertain an erroneous opinion upon the evidence.

(5) That such erroneous opinion touched a point material to the result of such proceeding.

If the case falls under the second part of the section it is not necessary to prove (a) in (2).

Section 194

194. Giving or fabricating false evidence with intent to procure conviction of capital offence.—Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital [3][by any law for the time being in force], shall be punished with [4][imprisonment] for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

If innocent person be thereby convicted and executed.—and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

Cases and Materials : Synopsis

1. *Scope.*
2. *Gives or fabricates false evidence.*
3. *Suborning witness to give false evidence.*
4. *"Intending thereby to cause, or knowing it to be likely that he will thereby cause any person to be convicted".*
5. *"Offence which is capital by the law in Bangladesh".*
6. *Sentence.*
7. *Sanction and complaint for prosecution.*
8. *Prosecution of approver under this section—Time for.*
9. *Procedure.*
10. *Practice.*
11. *Charge.*
12. *Complaint.*

1. Scope.—(1) The offence under this section is an aggravated form of offence for giving or fabricating false evidence made punishable under section 193. The accused can be punished under this section only when his intention and knowledge is proved. Where witnesses in their statements in the inquiry stage implicated the accused as murderer and at the trial exonerated them and declared that the previous statements were given under police pressure. But from the evidence it appeared that their first could well be true. It was held that the ingredients of section 194 were not satisfied because the statements implicating the accused could not be said to be definitely false *(PLD 1963 Karachi 624).*

2. Gives or fabricates false evidence.—(1) A police officer who forces a person to make a false statement to be recorded by a Magistrate under S. 164, Criminal P. C. may be held to fabricate "false evidence" and may be guilty inter alia of an offence under this section. But the sanction of the Government under S. 197 will be necessary for the prosecution of the police official under this section. *AIR 1967 All 519.*

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3. The words "by this Code" have successively been amended by Act XXVII of 1870, s. 7, Act IX of 1890, s. 149, and A.O., 1949, Sch. to read as above.
4. Subs. by Ord. No. XLI of 1985, for "transportation".

(2) A false statement to a Head Constable in an inquiry under S. 174 of the Criminal P. C. would not fall within this section. *AIR 1922 Lah 133.*

(3) Where false evidence had been given in an inquiry before the committing Magistrate and the deponent was convicted under S. 194 of the Code the conviction under S. 194 was confirmed on the ground that the accused had repeated the false evidence at the trial also. *1886 Pun Re No. 32, p. 76.*

(4) The accused gave evidence against one A in the committing Magistrate's Court but retracted it at the trial before the Sessions Court. It was held that the accused could only be convicted in the alternative under S. 193 and not under S. 194. *(1895) 18 Mys LR No. 220, p. 948.*

3. Suborning witness to give false evidence.—(1) Where a person produced before the Court a witness whom he had tutored to give false evidence with a view to cause the conviction of a person for murder, it was held that he was guilty under this section. *AIR 1927 All 721.*

4. "Intending thereby to cause, or knowing it to be likely that he will thereby cause any person to be convicted".—(1) The word 'knowing' connotes actual knowledge. It imports certainty and not merely a probability. It is not the same thing as belief as can be seen from the fact that the Code uses the words "knowledge or belief" in a number of sections. It is also different from intention which connotes a purpose or design. *AIR 1928 Pat 169.*

(2) Where a witness falsely deposed in the Sessions Court trying a murder case that one D had committed the murder, it was held, that the deponent did not know that D was likely to be charged for the offence of murder and that this section did not apply. *(1869) 3 BengLR 35.*

5. "Offence which is capital by the law in Bangladesh".—(1) Instigation of another to file a complaint against certain persons under S. 307 of the Penal Code does not fall under this section. *1979 MadLW (Cri) 165.*

6. Sentence.—(1) Accused contradicting himself on minor points in his evidence before the Committing Magistrate and in the Sessions Court—Sentence of three years reduced to one of nine months. *(1895) 18 MysLR No. 220, page 948.*

(2) Where an accused found guilty under S. 194 pleaded for lenient punishment on the ground that when he was under a mental strain he was meek to make the false statement, it was held that he could not be exonerated from his crime nor could the gravity of his offence be any lesser even if he was really coached to tell lies in court. His motive for giving false evidence could not but be wicked and malicious in wanting to influence the judge and getting K convicted for murder. Accused was given a deterrent punishment for 10 years. *(1981) 2 MalayanLJ 354.*

7. Sanction and complaint for prosecution.—(1) The question (of sanction) may arise at any stage of the proceeding. The complainant may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case. *AIR 1956 SC 44.*

(2) Complaint for offences under Ss. 323, 330, 342, 194, 195 and 196 Penal Code, made against police officer for having kept complainants in police station and having assaulted them to coerce them to make statement under S. 164—Complaint entertained statements of complainants and their witnesses recorded—Whether sanction under Section 197 is necessary or not may have to be determined from stage to stage and may be clear only in the course of progress of case—Complaint may

not disclose need for sanction but subsequent facts may establish its necessity—Hence it cannot be said that sanction under S. 197 is required before taking cognizance and that hence Magistrate had no jurisdiction to entertain complaint without a formal sanction. *AIR 1967 All 519.*

(3) In cases where the offence punishable under S. 194 is alleged to have been committed in or in relation to any proceedings actually pending in any Court or in any proceeding which has already been taken in any Court, no prosecution can be initiated against any person except by a complaint filed by that Court. *(1977) 4 CriLT 249 (Punj).*

8. Prosecution of approver under this section—Time for.—(1) It is the intention of the law that an approver cannot be prosecuted under this section until the original case has been fully heard and determined. *(1900) ILR 27 Cal 137.*

9. Procedure.—(1) Where a person is charged in the alternative under S. 193 or S. 194, he cannot be tried by the Magistrate. The offence under S. 194 being triable only by a Court of Session the Magistrate can have no jurisdiction over the case but ought to commit the case to the sessions. *(1885) 8 MysLR No. 354 p. 572.*

(2) Where a complaint was made against a person for an offence under S. 194 and the court ordered an enquiry under S. 340 of Criminal P. C. and the accused requested for calling the case diaries from the record, the Court held that they had a bearing for the purpose of preliminary enquiry under S. 340, Criminal P. C. and the court ought not to shut him out when the accused wanted to aid the court in determining the question before it. *1982 CriLJ (NOC) 155.*

(3) Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Sessions.

10. Practice.—Evidence—Prove: (1) That the accused caused certain circumstances to exist or made the false entry or made the document containing a false statement.

(2) That he did so intending that such circumstance, entry or statement should appear in the evidence in a judicial proceeding pending or prospective, or in a proceeding taken by law before a public servant or in a proceeding before an arbitrator.

(3) That the person conducting the proceeding had to form an opinion upon the evidence in which such false evidence appeared.

(4) That the accused intended that person to entertain an erroneous opinion upon that evidence.

(5) That such erroneous opinion touched a point material to the result of such proceeding.

(6) That the accused when giving or fabricating false evidence intended thereby to cause or knew that it was likely that he would thereby cause the person in question to be convicted of the capital offence.

For the second clause, prove furthe:

(1) That capital punishment was given effect, and

(2) That the person executed was an innocent person.

11. Charge.—The charge should run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, in the course of the trial of—before—, gave false evidence (or fabricated false evidence) intending thereby to cause (or knowing it to be likely that you will thereby cause)—to be convicted of the offence of—which by the law of Bangladesh is capital and

thereby committed an offence punishable under section 194 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

12. Complaint.—A complaint in writing of the Court before which the offence is committed or of some other Court to which such Court is subordinate is required under section 95, CrPC.

Section 195

195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with [5][imprisonment for life] or imprisonment.—Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [3][by any law for the time being in force] is not capital, but punishable with [5][imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is [5][imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to [6][such imprisonment for life], or imprisonment, with or without fine.

Cases and Materials

1. Scope.—(1) This section deals with cases where the intention is to procure conviction for an offence which is neither capital nor punishable with imprisonment for less than seven years. "Offence" means anything punishable under the Penal Code or any special or local laws.

(2) Offence under this section, like S. 194 is an aggravated form of the offence under S. 193 and applies to the giving or fabricating of false evidence by a person intending thereby to cause or knowing it to be likely that he will thereby cause a person to be convicted of a non-capital offence which is punishable only with imprisonment for life or for 7 years or upwards. *AIR 1966 All 66.*

(3) Statement on oath falsely supporting the prosecution case against an accused person more appropriately amounts to an offence under Ss. 193 and 195 and not under S. 211. *AIR 1973 SC 2190.*

(4) Where there is no giving of false evidence within S. 191 or fabrication of false evidence under S. 192 this section cannot apply. *AIR 1915 All 388.*

(5) Where A persuaded B to make a false statement before a police officer, it was assumed without any discussion of the point that A's act will not constitute "fabricating false evidence" and it was held consequently that A could not be proceeded against under this section. *AIR 1915 All 388.*

(6) Where a police officer in contravention of departmental rules, took photographs of under-trial prisoners, it was held that no inference could be drawn from the said fact alone that the police officer intended to use it for fabricating false evidence. *AIR 1916 All 141.*

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5. Subs. *ibid.*, for "transportation for life".
6. Subs. *ibid.*, for "such transportation".

(7) Section 195(1)(b), Criminal P. C., enacts inter alia that a prosecution for an offence under S. 195 of the Code requires a complaint by the Court if the offence is committed in or in relation to any proceeding in that Court. *AIR 1968 SC 1422.*

(8) When the procedure to be followed was that provided in S. 479A of the Code a complaint following the procedure laid down in S. 476 of that Code was barred under clause (6) of S. 479A. *AIR 1968 SC 1422.*

(9) The prosecution for perjury should be sanctioned by Courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge. *AIR 1971 SC 1367.*

(10) Taking cognizance of offence under section 188 of Penal Code—Magistrate empowered under section 190(I)(a) is competent to take cognizance of the offence under section 188 of the Penal Code upon enquiry report submitted by police of violation of order passed by the same Magistrate under section 144, Cr.P.C. without sending any written complaint to himself as required under section 195(1), Cr.P.C. *Anwar Hossain Vs. Jamal Hossain—1 MLR (1996) (HC) 93.*

2. Practice.—Evidence—ProveL (1) That the accused gave or fabricated false evidence.

(2) That the accused's intention in giving such false or fabricated evidence was to cause any person to be convicted of an offence which is not capital but punishable with imprisonment for life or imprisonment for a term of seven years or upwards.

3. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Sessions.

4. Charge.—The charge should run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, have given or fabricated false evidence intending thereby to cause (or knowing it to be likely to cause) a person to be convicted of an offence which is not capital but punishable with imprisonment for life or with imprisonment for a term of seven years or upwards and thereby committed an offence punishable under section 195 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Complaint.—A complaint in writing of the Court before which the offence is committed, or of some other Court to which it is subordinate, is required under section 195, CrPC.

Section 196

196. Using evidence known to be false.—Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Cases and Materials : Synopsis

1. *Scope.*
2. *"Whoever".*
3. *"Corruptly".*
4. *Uses or attempts to use as true or genuine evidence, any evidence which is false or fabricated.*
5. *Knowledge of evidence being false or fabricated.*
6. *Punishment*
7. *Difference between this section and Section 471.*
8. *Complaint by Court—Necessity of.*
9. *Procedure for giving complaint.*
10. *Procedure.*
11. *Charge.*
12. *Practice.*

1. Scope.—(1) This section deals with the corrupt use of false or fabricated evidence and has to be read with sections 191 and 192 which define the offence. More productions of a copy in answer to a Court summons is not an offence *(13 CrLJ 46).*

(2) Service of show cause notice on the person sought to be proceeded against before making a complaint regarding commission of offences under sections 196 and 471, Penal Code is not mandatory. Non-service of such notice does not vitiate the proceeding—Making of complaint regarding commission of offences under sections 196 and 471, Penal Code—In finding that a complaint should be filed, the Court is not required to decide the merit of the case. A complaint may be lodged if it appears that a prima facie case has been made out relating to the commission of the offence *(Ref 1 BSCD 241) 23 DLR 145.*

(3) The appellant and others as plaintiffs instituted a money suit against the Respondent Nos. 1 and 2. In the suit, a receipt was filed on behalf of the plaintiffs which purported to contain an admission of the defendants about the claim of the plaintiffs in the suit. The genuineness of the receipt was challenged by the defendants and an application was filed on their behalf for the prosecution of the plaintiffs u/s 476, Cr.P.C. On hearing both the parties the trial Court held that a *prima facie* case was made out against the appellant and others under Ss. 196 and 471 of the Penal Code and that it was expedient in the interest of justice that an enquiry should be made against them for the offences under the aforesaid section. The Trial Court accordingly made a complaint against the present appellant U/Ss. 196 and 471 of the Penal Code. An appeal was filed against the order of the Trial Court which were dismissed. In revision, the High Court dismissed the case against the appellant and some other but accepted it in respect of some of the petitioners on the ground that their names in the plaint were not signed by themselves but by S, one of the plaintiffs, who was their constituted attorney. Held:—(i) the High Court's view that the plaintiffs who were not active litigants but acted through others could not be held liable for Criminal Offence as it cannot be said that they also participated in filing the receipt which appeared to be *prima facie* forged one, was substantially correct. (ii) High Court was justified in setting aside the order u/s 476 so far as the plaintiffs were concerned. (iii) The position of the appellant stands on the same footing as he did not personally sign the plaint but it was signed by his constituted attorney. In that view of the matter the appellant cannot be said to be an active litigant and cannot therefore be *prima facie* deemed to be associated with the filing of forged receipt. *3 BSCR 74; 1 BSCD 24.*

(4) A certain witness was summoned at the instance of the accused to appear before the Court to produce a certain almanac said to be in his possession in order to prove by means of certain entries therein the date of death of a certain person. The witness appeared but neither produced nor was asked to produce in Court the almanac said to be in his possession. Hence, there was no material before the

Court to judge whether the alleged false entries in the almanac really existed at all. It was, therefore, held that the accused could not be held to have used or attempted to use false or fabricated evidence. *AIR 1937 Pat 467.*

(5) A mere attempt to get a false medical certificate which is refused does not amount to an attempt to use false or fabricated evidence, as such evidence is not in existence at the time of the alleged offence. *AIR 1917 Mad 686.*

(6) This section may be compared with Section 471 infra which deals with the offence of using of forged document as genuine. There may be cases falling under both the sections in which case the accused should be charged only under S. 471 which is a specific provision, and not under this section. *(1926) 44 CalLJ 113.*

2. "Whoever".—(1) The word "whoever" will include even an accused person using false evidence for the purpose of his defence. *ILR (1949) 2 Cal 440.*

(2) A person conducting a case on behalf of a party can be guilty of an offence under this section. *(1882) ILR 4 All 293 (295).*

(3) This section applies to the corrupt use of false or fabricated evidence not only by a party to a proceeding but also by a witness in such proceeding. But the section does not apply to the corrupt use of false or fabricated evidence by a Court. *AIR 1966 SC 523.*

3. "Corruptly".—(1) The word "corruptly" is not used in the sense of 'dishonestly' or 'fraudulently' as defined in the Code. *AIR 1966 SC 523.*

(2) The word "corruptly" does not connote a motive necessarily connected with bribery or the passing of money as an inducement to use the fabricated evidence and procure a false conviction. *AIR 1914 Lah 433.*

(3) The word "corrupt" does not necessarily include an element of bribe-taking. It is used in a much larger sense as denoting conduct which is morally unsound or debased. *AIR 1966 SC 523.*

(4) Where a Judge corruptly used the false evidence of a witness as true, knowing it to be false cannot be said to commit an offence under this section although he may be liable to be penalised under S. 219, Penal Code. *AIR 1938 Pat 83.*

(5) The word "corruptly" is used in Ss. 196, 198, 200, 219 and 220 to denote that those whose duty it is to submit evidence for consideration of the judicial and other functionaries on behalf of clients do not incur the penalties for using the evidence unless they use the evidence corruptly. *AIR 1914 Lah 433.*

(6) The accused in a criminal case, was charged with the commission of an assault in a village (A). The accused raised a plea of alibi and contended that at the particular time, he was in another village (B). In order to prove his plea of alibi he examined as his witness the patil of the village (B) and also produced a cattle-pound receipt. It was held that the patil had acted under a corrupt motive when he gave evidence of the alibi on behalf of the accused and that this amounted to a 'corrupt' use of false evidence by the accused. *AIR 1922 Bom 99.*

4. Uses or attempts to use as true or genuine evidence, any evidence which is false or fabricated.—(1) If a person is directed by the order of a Court to produce a certain document containing a false entry and, in pursuance of that order, he produces it and is further required to swear to

its authenticity, he does so involuntarily, i.e., against his own will and cannot be said to 'corruptly' use the false or fabricated evidence as true or genuine evidence. *AIR 1925 Rang 191.*

(2) Where in a suit against him by the creditor, the debtor filed a postal acknowledgment of the creditor which he had obtained in respect of an insured and registered cover containing a waste paper and applied to the Court for admitting it in evidence to prove the discharge of the debt. it was held that he was guilty, under this section, of attempting to use fabricated, false evidence as genuine, though he did not succeed in getting the evidence accepted. *AIR 1927 Mad 199.*

(3) A filed a complaint against B under S. 323 of the Code. In substance, the complaint was not false but it was bolstered up by false evidence namely by production of a beater with red stains which were alleged to be blood-stains but were found not to be blood-strains at all. Held that he was guilty under this section and not under S. 211. *(1908) 7 CriLJ 196 (Cal).*

(4) A, an income-tax assessee, relied on his false account books in an enquiry before the Income-tax Officer in order to show that his return of income was true—It was held that A was guilty of using or attempting to use the accounts as true or genuine evidence and was, therefore, liable under this section. *(1937) 20 NagLJ 214.*

5. Knowledge of evidence being false or fabricated.—(1) The prisoner's knowledge of the false character of evidence has to be established. Such knowledge must be present at the time of the user; it will not suffice if the accused came to know of the false character of the evidence sometime after he used it as true evidence. *AIR 1925 Mad 609.*

(2) Where a landlord filed a suit for recovery of rent, and he filed a copy of the Jamabandi record which was proved to be fabricated evidence, it was held that he used it with knowledge of its false character, because the alterations in the copy were all in favour of the landlord. It was further held that the copy of Jamabandi was fabricated evidence as the alterations therein were all material alterations changing the identity of the tenant, the amount of rent and the period of tenancy. *1887 AllWN 285.*

(3) Where in a suit for arrears of rent. A, conducting the defence of the tenant, produced three rent receipts in which the amounts were altered and called evidence in support of these receipts, it was held that he used the receipts knowing them to be false and was consequently guilty under this section. *(1882) ILR 4 All 293.*

6. Punishment.—(1) The language of this section is similar to that used in S. 471 of the Code and the same interpretation is applicable to this section. A person giving or fabricating false evidence and also using it can therefore be liable only under Ss. 193, 194 or 195, as the case may be and not under this section. *AIR 1926 Nag 137.*

(2) An offence under this section calls for a deterrent punishment as it is a serious offence and difficult of detection. But a lenient view also may be taken in certain circumstances. *AIR 1926 Bom 555.*

7. Difference between this section and section 471.—(1) The broad distinction between offences under the two groups is this, Section 465 deals with the offence of forgery by the making of a false document and S. 471 with the offence of using forged document dishonestly or fraudulently. Section 193 deals with the giving or fabricating of false evidence and S. 196 with corruptly using evidence known to be false. The gist of the offences in the first group is the making of a false document and the gist of the offences in the second group is the procuring of false circumstances or the making of a document, containing a false statement so that a judicial officer may form a wrong opinion in a judicial

proceeding on the faith of the false evidence. Another important difference is that whereas S. 471 requires a user to be either fraudulent, dishonest or both. S. 196 is satisfied if the user is corrupt. *AIR 1966 SC 523.*

(2) Where a false diploma is used by a person examined as an expert witness in a criminal case, in order to support his claim to be duly qualified as a criminologist, his offence falls under this section and not under S. 471 and he cannot be prosecuted under this section without the complaint of the concerned Court under S. 195(1)(b). *AIR 1966 SC 523.*

8. Complaint by Court—Necessity of.—(1) No complaint is necessary for prosecution of offences under Ss. 193 and 196 if committed during police investigation. *1975 Ker LT 596.*

(2) Where an offence under this section is committed in the course of a proceeding in Court, the offence cannot be taken cognizance of in the absence of a complaint by the Court. *AIR 1966 SC 523.*

(3) It is not permissible for the prosecution to drop a serious charge and select one which does not require the procedure under S. 195 of the Criminal P. C. and, thus, evade the provisions of that section. *AIR 1953 SC 293.*

(4) Where the Income-tax Officer, on the basis of a false affidavit filed before him, filed a complaint against the deponent without giving an opportunity of being heard, it was held that a false affidavit may be covered by Ss. 192/196, P. C., and the action of the Income-tax Officer was violative of the principles of natural justice and the complaint was bad in law even if the affidavit attracted Ss. 195 and 196, P.C. *1983 TaxLR 1449.*

(5) A complaint in writing of the Court before which the offence is committed or of some other Court to which it is subordinate is required under section 195, CrPC. An order under section 476 of the CrPC directing a prosecution for offences under sections 193 and 196 of the Penal Code amounts to a complaint under section 200, CrPC and the Court before making order must hold an inquiry and must itself specify by its order (i) the witness to prove the complaint, (ii) the false evidence complained against and (iii) where the person complained against knew that evidence which he was using as genuine was false.

9. Procedure for giving complaint.—(1) Where an offence under this section is committed in or in relation to any proceeding in any Court, it can be taken cognizance of by a Court only on a complaint made to it as required by S. 195(1)(b) of the Criminal P. C. The procedure to be followed for giving the complaint under S. 195(1)(b) of the Criminal P. C. is that provided for in S. 340, Criminal P. C. and not S. 344 which applies only to the offence of giving or fabricating false evidence and not to the offence of using such evidence. *AIR 1967 All 420.*

(2) A preliminary inquiry is not necessary in every case before a complaint is made under the section, and may be dispensed with if the Court thinks fit to do so. *(1893) 16 MysLR No. 348.*

10. Procedure.—(1) A complaint u/s. 196, P.C. by an Income-tax Officer and assessment proceedings before the Income-tax Authorities, held, could go on simultaneously. *1981 MadLJ (Cri) 217.*

(2) Not cognizable—Warrant—Bailable or not (according as the offence of giving such evidence is bailable or not)—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

11. Charge.—(1) Using and 'attempting to use' false evidence etc., are two distinct and separate offences, and should under S. 241, Cr. P.C. have to be charged in separate heads of the charge. As the offences charged are not punishable under S. 193 without the application of S. 196, both sections should have been entered in the charge. *(1865) 2 SuthWR Letter 9.*

(2) The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, corruptly used evidence to wit—which you knew to be false (or fabricated) and as such punishable under section 193 (or section 194 or section 195) of the Penal Code and thereby committed an offence punishable under section 196 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

12. Practice.—Evidence—Prove: (1) That the piece of evidence in question is false or fabricated.

(2) That the accused used or attempted to use such false or fabricated piece of evidence.

(3) That he used or attempted to use such evidence as true or genuine evidence.

(4) That when the accused used such evidence or attempted to do so he knew it to be false or fabricated.

(5) That when the accused so used, or attempted to do so he acted corruptly.

Section 197

197. Issuing or signing false certificate.—Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Cases and Materials

1. Scope.—(1) This section may be read with sections 509A and 510 and 510A, CrPC. These sections are new and are in the nature of exceptions *(Ref. 7 BCR 94 AD)*. Section 197 contemplates that the certificate should by some provision of law be admissible in evidence as such certificate without further proof. Where the accused who was a copyist framed an incorrect copy of a document by joining the name of a person in the copy whose name was not in the original. This document was presented afterwards by the person applying for the copy in a suit against the person whose name had been added in the copy, it was held that the accused had committed the offence under this section as he had issued a false certificate *(18 CrLJ 978)*. The certificate contemplated by section 197 which is required by law to be given or signed for the purpose of being used in evidence in the course of administration of justice.

(2) The essential ingredients of the offence under this section are:

(i) that the certificate must be one which is required by law to be given or signed or which relates to a fact of which such certificate is by law admissible in evidence;

(ii) that the certificate is false;

(iii) that the person issuing or signing such certificate knows or believes it to be false. *(1965) 3 LawRep 284.*

(3) A person can be said to sign a document only when there is physical contact between that person and signature or mark put on the document. *AIR 1950 SC 265.*

(4) A 'certificate' is a written testimony to the truth of any fact. The section deals with two kinds of certificates:

(i) that required by law to be given or signed.

(ii) that relating to a fact of which such certificate is by law admissible in evidence. *1882 RatUnCriC 182.*

(5) A decree-holder who has received the decree amount from the judgment-debtor is required by law (O. 21, R. 2 of the Civil P. C.) to 'certify' the payment to the Court. But he is not required to do so in writing, but may do so orally. Consequently, a written certificate of satisfaction is not a "certificate" within the meaning of this section. *AIR 1917 Cal 466.*

(6) Medical certificates by medical practitioners and character certificates are not certificates required by law to be given and are not within this section. *AIR 1943 Cal 40.*

(7) Where Rule 18 of the Post Office Savings Bank Rules provided that in cases of female depositors withdrawing amounts by their authorised agents, the agents must sign a certificate on the application for withdrawal to the effect "certified that the depositor is on this day alive and same" and the accused signed such certificate after the death of the depositor, he could not be said to commit an offence under this section. The certificate under Rule 18 was nothing but a declaration or a statement and could have been replaced by those words. *AIR 1926 Cal 258.*

(8) The mere fact that an Act requires that an application should be made and that it should contain certain statements does not necessarily mean that the Act requires a certificate to be given or signed. *AIR 1917 Pat 696.*

(9) The words "required by law" do not mean authorisation to issue or sign a certificate or authorisation to do something which could not be said to be illegal. These words have reference to some statutory requirement. Thus a solvency certificate is not one contemplated by this section. *(1972) 13 Guj LR 444.*

(10) The word "certificate" is not used here in the sense of "certification". *AIR 1917 Cal 466.*

(11) A written statement filed in a civil suit is not a certificate within the meaning of this section. *1972 AllCriR 503.*

(12) The principal of a College gave a certificate in respect of the age of a student so that he may take part in the sports. The Principal was not required by any law to give such a certificate, therefore he cannot be said to have committed an offence under Section 197. *1982 AllLJ 1231.*

(13) If the certificate has to be further proved by any witness then it is not one by law admissible in evidence. *AIR 1943 Cal 40.*

(14) Where a false medical certificate is obtained from a doctor for purposes of life insurance by false presentation of the real person who intends to apply for a policy of life insurance and the doctor issues such medical certificate of fitness in ignorance of the false presentation, the doctor is not guilty under this section. *(1965) 3 LawRep 284.*

2. Practice.—Evidence—Prove: (1) That the document in question purports to be a certificate.

(2) That such certificate is required by law to be given or signed or that it related to some fact of which such certificate is by law admissible in evidence.

(3) That such certificate is false.

(4) That it is false in a material point.

(5) That the accused issued or signed the same.

(6) That he, when doing so, knew or believed, such certificate to be false.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate/Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, issued (or signed) a certificate required by law to be given or signed or (relating to—a fact of which such certificate is by law admissible in evidence) knowing or believing that such certificate is false in a material point to wit and thereby committed an offence punishable under section 197 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 198

198. Using as true a certificate known to be false.—Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Cases and Materials

1. Scope.—(1) Section 198 must be read along with section 197. The section penalises the corrupt user of any false certificate as a true certificate and attempt to use such false certificate knowing it, to be false is made an offence. In the absence of any such knowledge a prosecution under this section is not sustainable.

(2) The words "any such certificate" mean the certificate dealt with by S. 197 and must therefore satisfy the requirements of Section, namely: (i) that it should be required by law to be given or signed, or (ii) that it should relate to any fact of which such certificate is, by law, admissible in evidence as such certificate, that is without further proof. *(1965) 3 LawRep 284.*

(3) A decree-holder certifying under Order 21, Rule 2, Civil Procedure Code, in writing the receipt of the decree amount is not issuing a 'certificate' within the meaning of that section. Consequently the use of such certificate cannot be an offence under this section. *AIR 1943 Cal 40.*

(4) Where a person used a false medical certificate and there was nothing to show that he knew that the medical certificate was false, he could not be convicted under this section. *AIR 1944 Cal 448.*

2. Practice.—Evidence—Prove: (1) That the document in question is a certificate.

(2) That it was required by law to be issued or that it relates to a fact of which such certificate is admissible in evidence.

(3) That the said certificate is a false certificate and false on a material point.

(4) That such certificate was issued.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate/Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, corruptly used or attempted to use as true a certificate (required by law to be given and signed or relating to a fact of which such certificate is by law admissible in evidence) but which is false in a material point, to wit—, and known by you to be the same and thereby committed an offence punishable under section 198 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 199

199. False statement made in declaration which is by law receivable as evidence.—Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Cases and Materials : Synopsis

1. Scope of the section.—(1) The essential ingredients of this section are (a) making of declaration which a Court or a public servant is bound or authorised by law to receive in evidence, (b) making a false statement in such declaration knowing or believing it to be false, and (c) such false statement should be touching any point material to the object for which the declaration is made or used. A conviction for an offence under this section may be passed primarily on circumstantial evidence. The accused is entitled to know the exact words which are alleged to have been used by him and which are sought to be made the subject of a charge of perjury. This section deals with declarations made or subscribed which any Court or public servant or the person are bound or authorised by law to receive which is false on material points with knowledge of its falsity and the person making the declaration either knew or believed it to be false or did not believe it to be true.

(2) Allegation stated in the complaint petition that the appellants filed a civil suit being OS No. 112 of 1982 and obtained an ex parte decree from the court of Sub—Judge, Rangpur to the effect that a deed of gift executed on 21-6-1980 by the respondent's late husband was forged, collusive and void as it was obtained by giving false evidence making false statement and false personation. The alleged offences have been committed in relation to a proceeding in the Civil Court and no Court is competent to take cognizance of an offence mentioned in clause (b) of section 195, CrPC except on a written complaint by the Court concerned. The refusal of the High Court Division to quash the proceeding in question is not justified. *7 BCR (AD) 94.*

(3) This section deals with the declarations which any Court of Justice or any public servant or other person is bound or authorised by law to receive as evidence of any fact. *(1895) ILR 22 Cal 131.*

(4) This section requires the following three essentials—(a) making of a declaration which a Court or Public Servant is bound or authorised by law to receive in evidence; (b) making of a false statement in such declaration knowing or believing it to be false, and (c) such false statement should be touching any point material to the object for which the declaration is made or used. *1983 CriLJ 1927.*

(5) The declaration contemplated in this section is a statement of facts in the form simply of declaration which for the purpose of poof of the fact, declared has, by itself, all the legal force of evidence given on oath or solemn affirmation. *AIR 1914 Low Bur 30.*

(6) Under this section, the "declaration' contemplated is not necessarily one which the person making the declaration is bound by law to make. *AIR 1967 SC 68.*

(7) The difference between Ss. 191 and 199 is this: Section 191 with statements and declarations falsely made by a person legally bound by an oath or by an express provision of law to state the truth. Section 199 deals with statements and declarations made voluntarily provided they are capable of being used as evidence and which the Court is bound to receive as evidence. *AIR 1967 SC 68.*

(8) Where a person is sought to be prosecuted on the basis of false statements made by him on oath in an affidavit filed in support of an application to a Court or transfer of a criminal case to another Court, it has been held that the case would come rather under S. 191 or S. 192 than under this section (S. 199). *AIR 1967 SC 68.*

(9)The pleadings in civil suits are bound to be verified; but the declarations in such verifications are not, as such, receivable in evidence in proof of the facts started in the pleadings, and hence are not covered by this section. *(1977) 81 CalWN 797.*

2. Made or subscribed.—(1) A document cannot be said to be 'made or subscribed' by a person unless it bears his signature. Consequently, it was held that even a deposition on oath recorded by the Court, but not signed by the deponent can only fall under S. 193 and not under S. 199. *(1887) 7 CalLR 536.*

3. "Court of Justice."—(1) It cannot be said that the Court was performing no judicial act in accepting or acting upon the affidavit filed in support of the service of notice. The Court is authorised by law to receive such affidavit in proof of the service of notice. *AIR 1947 Pat 37.*

4. "Bound or authorised by law to receive as evidence."—(1) The declaration must be one which is bound or authorised by law to be received as evidence of the fact declared. *(1912) 13 CriLJ 769 (All).*

(2) The following are examples of the declarations which are legally receivable as evidence of fact declared:—

(a) Affidavits made on oath administered by proper officer. *AIR 1947 Pat 54.*

(b) Statutory certificates under S. 2 of the Bankers Books' Evidence Act. *AIR 1914 Low Bur 30.*

(3) The following are examples of declarations which are not receivable as evidence of the facts declared:—

(a) Declarations in verification of pleadings or in insolvency petitions. *AIR 1927 All 383.*

(b) Report to a Revenue Officer for getting the applicant's name entered in the Revenue Register. *AIR 1914 LowBur 30.*

(c) Affidavits administered by persons not authorised to administer oaths. *(1972) 74 PunLR 521.*

(d) Statements made by a witness not on oath. *(1868-69) 4 MHCR 185.*

(4) False declaration in affidavit accompanying applications for admission to Medical College—Held, Medical College authority was not bound by any law to receive such declaration as evidence of any fact and no offence under S. 199 or S. 200 was committed. *1973 CurLJ 806.*

(5) Accused established to have made false declarations—False declarations made with a view to facilitate an offence under Imports and Exports (Control) Act—False declarations were not such as

would be received as evidence of facts before any Court or public servant"—Held, no offence under S. 193 or S. 199. *1968 CriLJ 1378.*

5. Making false statement, knowing or believing it to be false or not believing it to be true.—(1) It is one of the essential elements of this section that the accused must have known or believed that the statement was false or that he did not believe it to be true. *AIR 1947 Pat 251.*

(2) Where a person who prima facie could have had no knowledge at all of the facts which he stated in his affidavit as being known to him, and no attempt was made to indicate the sources of his knowledge, it was held that he must be presumed to have made the statement, if it was false, knowing that it was false. *AIR 1940 Pat 631.*

(3) Where a false statement in an affidavit was stated to be made on information as distinct from personal knowledge, it was held that it could not be said that the deponent knew or believed it to be false or did not believe it to be true. *AIR 1923 All 175.*

(4) Where an affidavit merely repeated the statement of another person it was held that it would not fall under this section. *AIR 1937 Pat 211.*

(5) Where there is a reasonable possibility that the defence story was true, it cannot be said that the essential ingredient of the offence namely, knowledge or belief that the statement is false is established. *AIR 1947 Pat 251.*

(6) The Court ought not to forget that statements which are in fact false, are often slip of memory and not deliberately or intentionally. And when the person making them admits the mistake and corrects them as soon as they are pointed out to him, it is not in the interests of justice that he should be prosecuted for an offence under this section. *AIR 1918 Mad 627.*

6. This section and S. 191.—(1) The distinction between S. 191 and Section 199 is that under S. 191 the declaration is one which a person bound by an oath or by an express provision of law to state the truth or being bound by law to make a declaration upon any subject makes statement which is false. The declaration contemplated by S. 199 is not necessarily one which the person making the declaration is bound by law to make. The essential element of an offence under S. 199 is that the declaration containing the false statement must be one which any Court of Justice or any public servant or other person is bound or authorised by law to receive as evidence of any fact. *1975 ChandLR (Cri) 88 (Punj).*

7. Verifications of pleadings.—(1) In order to constitute an offence under S. 199 a statement must be made in a declaration which must be receivable as evidence. A statement made in a verified pleading does not constitute evidence and is not receivable as such and therefore a person is not liable under S. 199, P. C., even though such statement is false. *(1976-77) 81 CalWN 797.*

8. Burden of proof. —(1) Burden of proof in a charge under this section is on the prosecution to show not only that the statement is false but also that at the time of making the declaration the accused knew or believed it to be false or didn't believe it to be true. *AIR 1947 Pat 251.*

(2) Where the prosecution fails to discharge this burden the accused is entitled to acquittal. It is not necessary that the prosecution must adduce direct evidence in this respect. *AIR 1934 Oudh 155.*

(3) A person can be convicted under this section purely on the basis of circumstantial evidence. *AIR 1944 Sind 155.*

9. False statement touching any point material to the object of the declaration.—(1) A false declaration will constitute an offence under this section only where it is made touching any point

material to the object for which the declaration was made. A false declaration on an immaterial point will not be an offence under this section but w ill be an offence under S. 191. *AIR 1969 SC 7.*

10. Procedure.—(1) Where the offence is alleged to have been committed in, or in relation to any proceeding in any Court, the complaint in writing of such Court is necessary under Section 195(1)(b) of Criminal P.C. to take cognizance of the offence. *(1899) 54 Mys CCR No. 295, p. 728.*

(2) Where it was complained that certain averments in the affidavits filed in a proceeding for allotment of premises before the Rent Control Officer are false though no specific averment was singled out for this purpose in the complaint it was held that the complaint was not entertainable. *AIR 1982 SC 1238.*

(3) Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

11. Practice.—*Evidence*—Prove: (1) That the accused made or subscribed the declaration in question.

(2) That a Court of Justice, etc., was bound or authorised to receive such declaration as evidence.

(3) That the accused made the statement in question contained in such declaration.

(4) That such statement is false.

(5) That such false statement touched a point material to the object of such declaration.

(6) That when making such false statement, the accused knew that it was false, or believed it to be false, or did not believe it to be true.

12. Charge.—The charge should run as follows:

I, (name and office of the Magistrate/Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, in a declaration made or subscribed with declaration, any Court of Justice or any public servant or other person is bound or authorised by law to receive, as evidence of any fact, made a statement which is false or which he knows or believes it to be false and does not believe to be true on a point material to the object for which the declaration was made and thereby committed an offence punishable under section 199 of the Penal Code and within my cognizance (or cognizance of the Court of Session).

And I thereby direct that you be tried on the said charge.

13. Complaint.—A complaint in writing of the Court before which the offence is committed or of some other Court to which it is subordinate, required under 195, CrCP.

Section 200

200. Using as true such declaration knowing it to be false.—Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material points, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

Cases and Materials

1. Scope.—(1) In order to attract the application of this section, the declaration must be used or attempted to be used corruptly. *AIR 1969 SC 7.*

(2) Where a false declaration which is not authorised by law to be received as evidence by a public servant is used for certain purpose, S. 200 is not attracted. *1973 CurLJ 806.*

(3) Affidavits filed in civil proceedings in support of interlocutory applications stating facts on the deponents belief but not giving the grounds for the belief are inadequate and defective and are not receivable in evidence in civil proceedings. *AIR 1934 Cal 694.*

(4) Even though an affidavit does not comply with the requirements of O. 19, R. 3, Civil P.C., it may still be a declaration within the meaning of Ss. 199 and 200 by virtue of the said Explanation. *AIR 1933 Pat 513.*

2. Practice.—*Evidence*—Prove: (1) That the declaration is false.

(2) That a Court of Justice etc., was bound or authorised by law to receive the same in evidence.

(3) That such declaration is false in a material point.

(4) That the accused made such false declaration or attempted to do so.

(5) That he did so corruptly.

(6) That when he so used attempted to use the same he knew of the falseness thereof.

3. Procedure.—Not cognizable—Warrant—Bailable—Not Compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, or about the—day of—, at—, corruptly used or attempted to be used as any such declaration which is false and which you knew or believe to be false and do not believe to be true on a point material to the object for which the declaration is made and thereby committed an offence punished under section 200 of the Penal Code within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Complaint.—Complaint in writing of the Court before which the offence is committed, or of some other Court to which it is subordinate, is required under section 195, CrPC. There must be proper materials before an action is taken. *24 CriLJ 147.*

Section 201

201. Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

If a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with [5][imprisonment for life].—and, if the offence is punishable with [5][imprisonment for life] or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment.—and, if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Cases and Materials : Synopsis

1. Scope.—(1) Section 201 deals with the causing of disappearance of evidence of an offence committed with an intention of screening the offender from legal punishment and giving false information respecting an offence committed with the intention of screening the offender from legal punishment. This section is not restricted to the case of a person who screens the actual offender. It can be applied to the person guilty of the main offence though a Court will not normally punish a person for both offences. For a conviction under this section an offence should have been committed for which a person has been convicted, if what has disappeared was not evidence of the offence the accused committed no offence under this section. Intention to screen the offender should be established. Where a person removed the body of the deceased from one place to another so to efface traces of the place, where the murder took place or to implicate another person this section attracted *(25 CrLJ 1140)*. Concealing the bloodstains, weapon, recovery of the body of the deceased on its being pointed out by accused will fall under this section. Where the offence was committed by the husband, the position of wife is privileged and if she conceals the evidence of the commission of crime, she cannot be held guilty under this section *(AIR 1949 Pat 80)*. Knowledge of the removal of the dead body is not enough to attract the applicability of this section. *(AIR 1963 SC 74)*. Mere rumour or suspicion is not sufficient to bring a case within the mischief of the provision of section 201. Punishment under section 201 cannot be awarded without ascertaining what original offence was committed *(51 CriLJ 1178)*. Where a person is acquitted of the main offence his conviction under this section without any further charge is not illegal *(1958 CrLJ 689)*. There is difference of opinion as to whether a person can be convicted under section 302 for committing a murder and also under section 201 for concealing the evidence of the crime *(PLD 1963 Pesh 178)*.

(2) No hint having been given to her during her examination under section 342 of the Code of Criminal Procedure as to the disappearance of evidence of crime she was prejudiced in her defence and her conviction under section 201, Penal Code is not sustainable. *41 DLR 349.*

(3) Accused's statement the part of which is incriminating does not connect him with the act of killing. *40 DLR (AD) 106.*

(4) There is no rule of law that once a witness has been discredited on one point, no credit is to be given to another. If a natural witness is declared hostile his evidence may be accepted if corroborated. The evidence of boatman PW 2 cannot be discarded. PW 1 informant, Hossain Ali did not say in his evidence that PW 4 (Sadam Ali) that he told this fact (five victims were taken away to an unknown destination) to PW 4. This portion of evidence of PW 4 is inadmissible. The story of taking five victims by a jeep unto school and the victims did not raise any alarm seeking help cannot be accepted as true with easy mind. In fact, the story suffers from inherent improbability. PW 11 Nurul Hoque, the driver of the jeep in which the victims were allegedly taken to the unknown destination (to a school) at the instance of the appellants and the non-appealing accused persons, does not prove affirmatively of taking of victims by jeep to a school nor had he produced log book recording the notes therein as admitted by him. This evidence does not inspire confidence, Appeal allowed. *40 DLR 97.*

(5) Causing disappearance of evidence pointing out the place of concealment of the dead body whether constituted the offence—No witness is forthcoming to say that the accused himself participated in the act of concealment and burial of the dead-body. The so-called eyes-witness have not also disclosed that the accused assaulted the victim. In such circumstances mere pointing out the place where the dead-body was concealed would not constitute the offence of causing disappearance of evidence. *(Ref. 1971 CrLJ 1215). 9 BLD 455.*

(6) Leave was granted by this Court to consider whether the evidence on record was properly assessed by the High Court Division and whether the testimony of solitary eye-witness of the incident can be relied upon in affirming the order of conviction. Since the local witnesses including the Chairman of the local Union Parishad stated that shortly after the occurrence when they met Abiran Nessa she told them Altaf and Shamsul Huq had murdered Rahima Khatun in the jute field, there is no reason to disbelieve evidence of PW 4 when she stated that she had seen Altaf and Shamsu killing her daughter. There is nothing on record that PW 4 Abiran Nessa had any special grudge or enmity to falsely implicate the accused persons in a murder case. Evidence of PW 4 as corroborated by PW 1, 5, 7, 9, 11, 12 and 13 has established beyond all reasonable doubt that appellants Altaf and Shamsul have committed the murder of Rahima Khatun in furtherance of their common intention. Accordingly, their conviction under sections 302/34 of the Penal Code is upheld. Their conviction under sections 201/34 is, however, set aside as there is no evidence to sustain the charge. *4 BCR (AD) 114.*

(7) There was no eye-witness that the accused murdered his wife and daughter—Strong circumstantial evidence established and proved beyond doubt that the accused who was seen before and after the death of his wife and daughter was instrumental to their death—Prosecution proved the motive of the murder of the victims, which was immoral and illicit love between the accused and accused's sister-in-law who was carrying for the second time a child by the accused-condemned prisoner. In a capital sentence case the hearing should be concluded with topmost priority—The hearing as delayed for nothing—The spectre of death was haunting the condemned prisoner for about 2 years—This delay of two years has provided extra punishment which calls for reduction of sentence. *3 BCR 332.*

(8) Accused appellant were charged under sections 302/34 of the Penal Code, but Additional Sessions Judge on consideration of evidence on record found them guilty under section 201, Penal

Code—High Court Division upheld the conviction by referring to sections 236 and 237 of the Code of Criminal Procedure—Appellate Division *(Ref. 4 BSCR 418). 1 BCR (AD) 129.*

(9) Charge and conviction under sections 302 and 201, if legal—A man can be charged both under section 302 for the offence of murder (or as in the present case under section 314 as well as under section 201 PC for causing disappearance of the evidence of murder but in a case of this description (i.e. where the same person has been charged under section 302 as well as under section 201) it is proper that the charge under section. 201 should be made in the alternative. Where charge under section 302 against an accused fails there is nothing illegal to convict him under section 201 if offence under this section is established against him. This is permissible even though charge under section 201 was not in terms framed against him as such a course is permissible under the provisions of section 237 of the CrPC. *(Ref 16 DLR 189 and 11 DLR 62 WP). 21 DLR 783.*

(10) Causing disappearance of the evidence of offence. So far as the proposition of law laid down in *16 DLR 189* is concerned we are unable to agree with board proposition laid down there, namely, mere carrying of the dead body in the absence of anything to show that a physical attempt was made to conceal the same is not enough to attract the mischief of section 201 of the Penal Code. If a murder be committed at place A and the dead body be removed from there to another place by a person who knew or had reason to believe that a murder had been committed certainly he causes the disappearance of an evidence of the commission of murder inasmuch as he has caused to disappear a very important piece of evidence concurring the venue of murder. Such removal of the body is very likely to react against the entire prosecution case. *20 DLR 464.*

(11) Joinder of charges under sections 302 and 201 PC against two persons illegal—The offences alleged to have been committed by the two accused are unconnected with each other and are separate offences, and, as such, they could not be tried together in the same trial. It makes no difference that the accused has been acquitted *(Ref: 7 DLR 532, 6 DLR 171). 12 DLR 392.*

(12) Murder—Evidence, appreciation of—Conviction for murder based on circumstantial pieces of evidence not "well authenticated" or "well knitted" from any angle. Recovery of dead body of deceased at pointing of accused, however, established beyond doubt. Conviction under section 302, PC set aside while that under section 201, Penal Code maintained in circumstances of case. *1981 PCrLJ 1.*

(13) The section is intended to reach acts to which Ss. 194 and 195 do not extend. It does not include acts falling within those sections. It is an attempt to define the position as that of an accessory after the fact. *AIR 1960 Mad 9.*

(14) In both cases i.e. (a) Causing disappearance of evidence of an offence and (b) Giving of false information the accused must have intended to screen the offender from legal punishment. *AIR 1952 SC 354.*

(15) Where in a case of murder there is no proof that the accused charged under this section concealed the dead body (or otherwise destroyed the evidence of the crime or cause it to disappear or that he gave any false information with a view to shield the culprit from punishment) this section will have no application. *AIR 1967 Him Pra 10.*

(16) Disappearance of evidence—There was no witness saying that the accused participated in concealment and burial of the dead body, not the eye-witnesses disclosed that the accused assaulted the victim. In such circumstances mere pointing out the place where the dead body was concealed would not constitute the offence of causing disappearance of evidence. *Gopal Rajgor Vs. State 42 DLR 446.*

(17) Accused's statement the part of which is incriminating does not connect him with the act of killing. In the statement of accused Yasin Majhee which was recorded in Bengali it appears that he accompanied the murders upto the house of Ysain Mridha where the dead body was brought. This part of the statement may be incriminating if at all in respect of the offence of concealment of the dead body, but it does not connect him with the act of killing. *State Vs. Abdur Rashid Piada 40 DLR (AD) 106.*

(18) The statement of the accused Joynal to the Chairman is of the same nature and as such is not a confessional statement. As to the extra-judicial confession orally made by accused Joynal to PW 2, Chairman, this is also of the same nature as the statement recorded by the Magistrate; he did not implicate himself in the murder, and as such it is not a confessional statement implicating himself and other accused in the murder. *State Vs. Abdur Rashid 40 DLR (AD) 106.*

(19) Since both the condemned prisoners are sentenced to imprisonment for life there is no necessity for the separate sentence to be passed against them under section 201 of the Penal Code . *State Vs. Hamida Khatun and another 50 DLR 517.*

(20) The trial Court has rightly found that the appellants namely, Hemayet Khan, Sabur Khan, Nuruzzaman Chowdhury @ Meskat Chowdhury and Shariff Shawkat Hosain are guilt of the offence under sections 302/34 of the Penal Code as these appellants caused the death of Belal in furtherance of their common intention to cause the death in a gruesome manner and the accused Munshi Moniruzzaman is found guilty of the offence only under section 201 of the Penal Code for concealing of the dead of the victim. *State Vs. Hemayet Khan and other (Criminal) 3 BLC 56.*

(21) The convict-appellant Dr. AKM Akhter Azam in spite of the fact that on his arrival at the house of convict-appellant Shawkat Iqbal he found Renu dead but without ascertaining the real cause of death by the standard mode or method the said doctor issued the certificate with the handing Death Certificate and his conduct goes to show that he issued the certificate for screening appellant Shawkat Iqbal from legal punishment when in all reasonableness it was known to him that death did not occur to the deceased due to the diseases written by him in the certificate but Renu was done to death in unnatural manner. *Dr. AKM Akhter Azam and others Vs. State (Criminal) 6 BLC 231.*

(22) Causing disappearance of evidence—No witness stated that the accused himself participated in the act of concealment and burial of the dead body—So-called eye-witness have not also disclosed that the accused assaulted the victim—In such circumstances mere pointing out by the accused of the place where the dead body was concealed would not constitute the offence of causing disappearance of evidence. *Gopal Rajgor and others Vs. The State 9 BLD (HCD) 455.*

(23) To sustain a charge U/s. 201, Penal Code it is essential to prove that an offence has been committed and that the accused knew or had reason to believe that an offence has been committed and with the requisite knowledge and intent to screen the offenders from legal punishment causes the evidence thereof to disappear or gives false information in respect of such offence, knowing or having reason to believe the same to be false. *Khandkar Md. Moniruzzaman Vs. The State, 14 BLD (HCD) 308.*

(24) The act alleged to be the screening of the offender must be the voluntary act of the accused, for it is only then that he can be said to have done the act with the intention of screening the offender form punishment *AIR 1930 All 45.*

(25) Where the accused not connected with any offence carried the woman lodging report of commission of rape on her with her active consent to certain hospital for purpose of abortion, the

accused could not be said to have committed an offence under either S. 313 or S. 201. *1983 CriLJ (NOC) 192.*

2. This section and Ss. 194 and 195.—(1) An offence under S. 194 or S. 195 brings into the field an entirely different set of circumstances and involves the fabrication of a false charge against a third party which is not involved in a case of causing the evidence of an offence to disappear. *AIR 1933 All 30.*

3. This section and S. 114.—(1) The borderline between abetment of an offence and giving false information to screen the offender may be rather thin in some cases and that it would be prudent in such cases, to err on the safe side and hold the accused guilty only under S. 201 and not under S. 114 in the instant case one K was murdered by R who had an intrigue with C, the wife K. As R Was running away, C gave out that some dacoits had come and taken away her jewels also. It was held that C should be proceeded against under S. 201 and not under S. 114 of the Code. *AIR 1953 SC 131.*

4. "Whoever".—(1) The word "whoever" in the section refers to the person who causes the evidence of the actual commission of the offence to disappearance and not to the person who causes the disappearance of the evidence as to by whom the offence was committed. *AIR 1962 Guj 225.*

5. "Offence has been committed".—(1) In order to constitute an offence under this section it is essential to establish first that an offence has been committed for which some person known or unknown would be criminally irresponsible. *AIR 1952 SC 354.*

(2) To establish the charge under S. 201, the prosecution must first prove that an offence had been committed, not merely a suspicion that it might have been committed—and that the accused, knowing of having reason to believe that such an offence had been committed, and with the intent to screen the offender from legal punishment had caused the evidence thereof to disappear. The proof of the commission of offence is an essential requisite for bringing home the offence under S. 201, Penal Code. *AIR 1968 SC 829.*

(3) Where no offence is proved to have been committed by anyone, there can be no question, obviously, of any person "Knowing or having reason to believe" that an offence has been committed, or of screening any offender or of causing the disappearance of evidence of the "commission of such offence ". Thus, the removal or concealment of the body of a deceased person, not proved to have been murdered, cannot be an offence under this section. *1976 CriLJ 1629.*

6. "Offence".—(1) The word 'offence', as used in the section, does not contemplate that the accused should know the particular section of the Penal Code under which the offence falls or the precise character of the offence committed. *AIR 1960 Mad 9.*

(2) The "offence" mentioned in the 3rd and 4th paras of this section must be understood in the same which it has the 2nd para, namely an offence which the person accused under this section either knew or had reason to believe, had been committed. *AIR 1965 SC 1413.*

7. "Knowing or having reason to believe".—(1) The words 'having reason to believe' in the first paragraph of the section and the words 'he believes' in the second paragraph refer to the same state of mind; proof of one is proof of the other. *AIR 1965 SC 1413.*

(2) A person can be said to have reason to believe a thing only if he has sufficient cause for such belief. *AIR 1960 Mad 9.*

(3) Whether there was sufficient cause for the belief would depend upon the facts and circumstances of the particular case. *AIR 1960 Mad 9.*

(4) Knowledge of some crime having been committed cannot be ascribed to accused by mere relationship with the main offender. *1980 AllLJ 762.*

(5) Where a certain person is proved to have been murdered, on a certain day, the mere fact that the accused knew the place where certain articles which the deceased had with him on that day, were to be found, is a very suspicious circumstance against the accused but is not sufficient to convict the accused either of the murder or of the offence of concealing the evidence of the crime under this section. *AIR 1941 Mad 316.*

8. "Causes any evidence to disappear".—(1) One of the essential ingredients of the offence under this section is the causing of the disappearance of evidence of the crime. *AIR 1958 All 467.*

(2) The concealing or disposing of the body of a murdered person would clearly amount to causing the disappearance of evidence of the crime. *AIR 1975 SC 455.*

(3) A man who conceals blood-stained knife with which murder has been committed would be causing evidence to disappear as much as if he were to bury body of the victim. *AIR 1958 Punj 183.*

(4) A person may be said to cause the disappearance of evidence of the commission of an offence if by his act any evidence of the crime ceases to be visible. *AIR 1967 Him Pra 10.*

(5) Where A committed murder and concealed the dead body in a room in the house and ordered his wife B not to allow anybody inside the house, B cannot be said to cause the disappearance of evidence of the crime by reason merely of the fact that she refused to allow any one to come inside the house though the position would have been otherwise if she herself had concealed or removed the dead body. *AIR 1949 Pat 80.*

(6) Mere moving dead body of murdered person a few feet or a few yards from the spot where the offence was committed would not amount to causing disappearance of evidence. *ILR (1965) 1 Mad 346.*

(7) By merely removing dead body of murdered person from one place to another, a person can be said to have caused evidence of the said offence to disappear. *1982 CriLJ 942.*

(8) Where the body of a murdered person lies where the murder took place unconcealed, obviously this section can have no application. *AIR 1931 Lah 278.*

(9) Where an offence of forgery was committed and X stole the documents and was caught and the document recovered in a damaged condition, it was held that, as the document had not actually disappeared, this section would not apply, but that X could be charged with an offence under S. 511 read with this section. *AIR 1915 All 385.*

(10) A mere knowledge on the part of A, that evidence of a crime had been caused by another to disappear is not sufficient to charge A under this section. In order that A may be liable under this section it must be proved that A himself had caused such disappearance or had given false information respecting the offence; even a strong suspicion is not sufficient. *AIR 1963 SC 74.*

(11) The expression "whoever.....causes....." clearly envisages some active step on the part of doer of the act and so in the matter of causing disappearance of evidence relevant to a particular offence the person charged must be proved to have actively participated in the matter of disappearance of evidence and not more sufference by him or her of the removal of such evidence by other. *1975 CriLJ 169 (Gauhati).*

(12) It depends on the circumstances of each case whether it can be said that the accused's act amounted to causing the evidence of the commission of the offence to disappear. *AIR 1971 SC 2013.*

9. "With the intention of screening the offender."—(1) It is an essential element of the offence under this section that the accused should have caused the evidence of the offence to disappear with the intention of screening the offender from legal punishment. *AIR 1966 Madh Pra 106.*

(2) The question whether the accused intended to screen the offender depends upon the facts and circumstances of the particular case. *AIR 1963 Guj 135.*

(3) Where the two accused who were sweeper were seen carrying a dead body it could not be said that they had any intention as they were employed by the other accused and according to his command they carried the dead body. They could not be convicted under Section 201. *ILR (1980) Bom 1661.*

(4) Where the accused admitted the possession and disposal of the ornaments of a murdered boy and such disposal of the ornaments resulted in screening the offender, it was held that the accused must be presumed to intend the natural consequences of his act and, therefore, to have intended to screen the offender form punishment . *AIR 1954 Mad 1088.*

(5) The mere fact that a concealment was likely to have the effect of screening the offender is not sufficient to prove accused's intention to screen the offender from punishment. *AIR 1963 MadhPra 106.*

(6) It is not necessary that the intention to screen must be of a specified offender. An intention to screen even an unknown offender is sufficient. *AIR 1927 Sind 241.*

(7) The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. It is one thing to entertain a certain intention and another to have the knowledge that one's act may possibly lead to a certain result. *AIR 1960 Mad 9.*

10. Accused need not be aware of the identity of the offender.—(1) It is not necessary for a conviction of the accused under this section that he should be aware of the identity of the offender whom he intends to screen. *(1974) 40 CutLT 242.*

(2) Where the accused was proved to have secretly buried the headless body of a person just murdered, but there was no proof that he was aware of the identity of the murderer, it was held that the accused could be convicted under this section. *AIR 1933 Lah 516.*

(3) If it is clear that the false information was given in order to screen the offender, whoever he was, form punishment, this section will apply. *AIR 1937 Sind 23.*

11. Suicide.—(1) The causing of the disappearance of the body of a person who has committed suicide is not an offence under this section, as it could not be said that there was an intention to screen from punishment the dead person who was the offender. *AIR 1934 Sind 139.*

12. Section, if applies to person concealing his own offence.—(1) S . 201 can be applied even to a person guilty of the main offence. *AIR 1953 SC 131.*

(2) A person charged for the principal offence and also under this section may be convicted under this section even though acquitted of the main offence. *AIR 1979 SC 1534.*

(3) Although there is no impediment to a person being convicted for both the main offence and an offence under this section, in practice, a Court will not convict an accused for both offences. *AIR 1953 SC 131.*

13. Act done under threat of danger to life.—(1) A person causing the disappearance of evidence under threat of danger to his life would still be liable under this section, but will be protected under S. 94 of the Code. *AIR 1957 All 184.*

(2) Where X is ordered under threat of being shot dead to take away dispose of the body of a murdered person to a place where it is not likely to be recovered and does so even after the danger of instant death has ceased, he is liable under this section. *AIR 1938 All 91.*

14. any evidence of the commission of that offence.—(1) The causing of the disappearance of evidence as to the locality of the crime will be the causing of disappearance of "any evidence of the commission of the offence". Where X in murdered at place A and the body is removed and placed at place B removing all traces of the crime at A, the case will fall under this section. *AIR 1958 Punj 183.*

(2) The expression "Any evidence of the commission of the offence" refers, not to evidence in the extensive sense in which that word is used the Evidence Act, but the evidence in its primary sense as meaning anything to make the crime evidence such as the existence of a wounded corpse or of bloodstains, fabricated document or similar material objects indicating that an offence has been committed. *AIR 1958 Punj 183.*

(3) The suppression of certain statements by witness made to the police during the course of investigation in a case cannot thus be said to be causing the disappearance of evidence of the crime within the meaning of this section. *AIR 1921 Bom 115.*

(4) Where an offence is committed, there may be evidence of various types:

(i) Evidence showing that the offence has been committed.

(ii) Evidence showing that the offence was committed at a particular place.

(iii) Evidence showing that the offence was committed by a particular person. *AIR 1962 Guj 225.*

(5) The section does not apply to a person who causes the disappearance of evidence as to the person by whom the offence was committed inasmuch as in such cases, the accused cannot be said to cause the disappearance of the evidence of the commission of the offence. *AIR 1962 Guj 225.*

(6) The stress is on the words "any evidence". So any person who was has taken part in causing any evidence of an offence to disappear will be liable under this section. *AIR 1958 AndhPra 37.*

15. Giving false information.—(1) There are 3 groups of sections under the Code relating to the giving of information:

(i) Sections 118 to 120 dealing with concealment of design to commit an offence.

(ii) Sections 176, 177, 181, 182—Omission to give information or giving false information on any subject on which the accused was legally bound to give information.

(iii) Sections 201-203—The giving of false information as to the commission of an offence or the omission to give information as to an offence, which the accused was legally bound to give. *AIR 1960 Mad 9.*

(2) The giving of a false information respecting an offence is an offence under this section where the accused knows it to be false or believes it to be false. *AIR 1975 SC 1883.*

(3) Giving of a false information respecting an offence under this section, when such information is given with the intention of screening the offender from legal punishment. *AIR 1962 Ker 133.*

(4) The section does not say to whom the false information should be given. It would take in private persons as well as public servants including the police, but it would not include a mere passer-by who is not interested in bringing the offender to book. *AIR 1962 Ker 133.*

(5) It is not necessary that the information should be given to the police or a Magistrate, or any other public servant. *AIR 1960 Mad 9.*

(6) It is not material whether the information is volunteered or given in reply to inquires. *AIR 1960 Mad 9.*

(7) Statements contained in first information report under S. 154, Criminal P. C. are covered by the section. *AIR 1962 Ker 133.*

(8) Information given by a person in the course of an investigation by the police cannot even, if false, amount to an offence under this section. *AIR 1962 Ker 133.*

(9) It is not necessary under this section that the false information should be given by a person who is legally bound to give information to the authorities regarding the commission of an offence. *AIR 1960 Mad 9.*

16. Evidence and Proof.—(1) A person accused of an offence under this section cannot be convicted on the testimony of accomplices unless the testimony is corroborated independent evidence in material particulars. *1973 CriLJ 1426.*

(2) It is the totality of facts and circumstances and the conduct of the accused with reference to the incriminating evidence and not the mere possession of relevant evidence that will raise the presumption against him under S. 114 of the Evidence Act. *1971 CriLJ 1215.*

(3) Where the circumstantial evidence in a particular case is sufficient and safe enough to warrant a finding that the offence has been committed, is a question of facts and not of law. So is the question whether the accused knew or had reasons to believe that such an offence has been committed. This question further depends on an assessment of the accused's mind. Nevertheless, it is a question of fact. *AIR 1975 SC 1925.*

(4) Where a person is accused of an offence under this section by reason of his having given false information to the police regarding the commission of an offence, the falsity of the information can only be proved by some other evidence. *AIR 1939 Sind 130.*

(5) In order to establish the charge under this section it is essential to prove that an offence has been committed, that the accused knew or had reason to believe that such an offence had been committed and with the requisite knowledge and with intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offence knowing or having reason to believe the same to be false. *AIR 1979 SC 1245.*

(6) Where one P was shot dead at the farm of A by the accused D in conspiracy with H and S and P's body was taken in A's car and thrown in a lonely well on the boundary of the village, but there was no allegation that A was in any manner concerned as an abettor or accomplice in the murder or participated or abetted the removal and disposal of P's dead body, the mere fact that after five days after P's murder A got his car washed at one petrol pump could not , by any stretch of imagination, be prime facie evidence of the factual ingredients of an offence under S. 201. *AIR 1980 SC 1560.*

(7) In this case A, B and C were prosecuted under Ss. 364, 302/34, 120B/302 and S. 201. While C was held guilty of these offences, others were acquitted. The High Court in appeal confirmed the decision of the trial Court. In appeal to the Supreme Court, C was acquitted of all the charges except one under S. 201. It was held that the offence under Section 201 was established against him by reason of the approver's deposition coupled with very reliable material in proof of the recovery of the dead body (of the murdered person) at the instance of C. *AIR 1979 SC 1280.*

(8) Conviction under S.302 and S. 201—Body of wife recovered at the instance of the accused, husband of deceased—Body was fully decomposed and no skin or viscera were there and cause of death

could not be ascertained—Prosecution case mainly based on confessional statement of accused—Evidence on record corroborating confessional statement of accused which was considered to be voluntary and true, conviction of accused upheld. *1983 Raj CriCas 157.*

(9) Conviction of accused under Ss. 302, 201, 323 r/w 534—Statement of eye-witness recorded 2-3 days after the incident—F.I.R. recorded 36 hours after incident—These are great infirmities in the prosecution witnesses—Accused cannot be convicted for the offences. *1984 CriLR (Mah) 67.*

(10) Conviction under—Dead body in very advance stage of decomposition—Cause of death could not be ascertained—Homicidal death of victim not proved—Accused cannot be convicted only on evidence of oral extra-judicial confession made by him. *1984 RajCriC 54.*

17. Charge.—(1) If a person, who is charged for both the main offence and also under S. 201 is acquitted of the main offence, the acquittal is no impediment to his conviction under Sec. 201. *1979 CriLJ (NOC) 149 (Kant).*

(2) Accused charged for murder and also under S. 201, P.C. along with others—Accused acquitted by Sessions Court and also by High Court of an offence under S. 201, P.C.—Appeal against conviction for murder but no appeal against acquittal under S. 201—Held, in the circumstances it was not possible for the Supreme Court to convict the accused for the first time under S. 201 P.C. *AIR 1975 SC 1252.*

(3) Accused charged with murder—Recovery of dead body at instance of accused—Accused stating that he had buried corpse—Accused acquitted of the charge under S. 302, sP.C—Accused can be convicted in appeal under S. 201 for concealing dead body of deceased knowing that he was murdered. *1968 RajLW 147 (160).*

(4) Where a charge is framed against the accused only for an offence under Sec. 302, it would be proper to consider whether an offence under S. 201 has been established only if the case under S. 302 is not proved. *AIR 1937 PC 179.*

(5) It is unsatisfactory to have an alternative charge one count charging the accused as principal and the other as accessory after the fact. *AIR 1916 Cal 919.*

(6) The joinder of two separate charges in respect of two false reports in respect of two separate distinct offences is not justified. *(1908) 8 CriLJ 497.*

(7) Person charged with murder may be convicted under S. 201—His conviction under S. 194 is not illegal but he must be asked to plead to the charge under S. 194. *AIR 1933 All 30.*

(8) Where according to the prosecution two persons joined in laying a false trial after a murder and the actual false information suggestive of burglary given by one of them was only an incident of the transaction; the murder, the fabrication of evidence to suggest burglary and the false information given by one of them are so connected together as to form one transaction and each of the accused will be punishable u.s 201, P.C., even without a specific charge framed in that behalf. *AIR 1933 Nag 136.*

(9) The charge should run as follows:

I, (name and office of the Magistrate/Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—,at—, knowing or having reason to believe that certain offence to wit—punishable with—has been committed, did cause certain evidence of the said offence to disappear, to wit—(or knowingly gave false information, to wit) with the intention of screening the said (name of person committing the offence) from legal punishment, and thereby committed an offence punishable under Section 201 of the Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

18. Sentence.—(1) The decree of heinousness of the offence of concealing an offence so as to screen the offender from legal punishment must be proportionate to the heinousness of the offence actually committed and sought to be concealed. *AIR 1965 SC 1413.*

(2) Where the accused causes disappearance of the evidence of two offences committed by a single act, the accused may, strictly speaking be said to commit two offences under this section and the punishment cannot be limited by either S. 71 of the Code or S. 26 of the General Clauses Act. But normally, no Court should award two separate punishments for the same act constituting two offences under Section 201. *AIR 1965 SC 1413.*

(3) Where the accused caused the disappearance of the evidence of the commission of a crime more on account of panic than with any deliberate intention to screen from punishment the person who committed the crime, a severe punishment was held unnecessary. *AIR 1935 All 282.*

(4) The husband of the deceased and his father were found to be guilty of offences punishable under Section 302 and Section 201 respectively. It sentenced the husband to life imprisonment under S. 302 and no separate punishment under S. 201 was passed against him. His father was sentenced to three years rigorous imprisonment under S. 201. In appeal by the husband, the Supreme Court acquitted him of the charge of murder but sentenced him to the maximum punishment of seven years' rigorous imprisonment, observing that his case was different from his father's case on two grounds . Firstly, as the husband of the deceased, it was his duty to do something to protect his wife and, secondly, he took a leading part in disposing the body of the deceased. *AIR 1974 SC 778.*

(5) Separate sentence u/s. 201 along with a conviction u/s. 302 is illegal. *AIR 1916 Mad 1163.*

19. Procedure.—(1) Conspiracy to suppress the evidence of murder and to screen the murders and to commit defamation could never be postulated as part of a police officer's function either by the provisions of the Police Act or by any other law which confers powers on the police. *AIR 1980 Andh Pra 219.*

(2) Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class or second class if the offence falls under first class. In case of 2nd clause—do; in case of 3rd clause Metropolitan Magistrate or Magistrate of the first class or court by which the offence is triable.

20. Practice.—*Evidence*—Prove: (1) That an offence has been committed. Mere rumour or suspicion is not sufficient.

(2) That the accused knew or had reason to believe, that such offence had been committed.

(3) That the accused caused evidence thereof to disappear, or gave false information respecting such offence, knowing or having reason to believe the same to be false.

(4) That the accused did as in (3) with intent to screen the offender from legal punishment.

The following must be proved as an aggravating circumstance:

(5) That the offence in question was punishable with death or imprisonment for life or with imprisonment extending to ten years.

Section 202

202. Intentional omission to give information of offence by person bound to inform.—Whoever, knowing or having reason to believe that an offence has been

committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Cases and Materials : Synopsis

1. *Scope and applicability.*
2. *"Knowing or having reason to believe."*
3. *Intentional omission to give information.*
4. *"Legally bound to give information".*
5. *Conviction.*
6. *"Whoever"—Main offender if can be convicted under this section.*
7. *Practice.*
8. *Procedure.*
9. *Charge.*

1. Scope and Applicability.—(1) This section should be read along with section 44 and 45 of the CrPC. Section 44 makes it obligatory upon every person to give information to the nearest magistrate or police officer of offences enumerated therein and under this section the intentional omission is made punishable *(AIR 1964 Pat 62).* The word "whoever" occurring in section 202 refers to a person other than the offender and has no application to the person who is alleged to have committed the principal offence *(AIR 1979 SC 1232).*

(2) The accused committed an offence punishable under section 202 of the Penal Code for not giving the information about the offence either to the nearest Magistrate or to the police station. *State Vs. Md. Bachchu Miah @ Abdul Mannan and 5 others 51 DLR 355.*

(3) The provisions of the section are not intended to be punitive in themselves, but are intended to facilitate the getting of information as to the commission of offences and thereby to facilitate steps being taken in the investigation of the same. *AIR 1921 Oudh 227.*

(4) Where the police received information of the offence from another person in the presence of the accused he will not be guilty under this section merely because of his omission to inform the police, as the section is not intended for such cases at all and is not applicable to them. *AIR 1921 Oudh 227*

(5) In a prosecution under S. 202, the prosecution must establish the main offence before making a person liable under S. 202. To sustain a conviction under S. 202, it is also necessary for the prosecution to prove (i) that the accused had knowledge or reason to believe that some offence had been committed, (ii) that the accused had intentionally omitted to give information respecting that offence and (iii) that the accused was legally bound to give that information. *AIR 1979 SC 1232.*

2. "Knowing or having reason to believe".—(1) In order that there may be a conviction under this section the accused must know or have reason to believe that an offence of which he is bound to give information has been committed. *(1905) 2 CriLJ 133.*

(2) If the evidence is not sufficient to show that the circumstances were such that any ordinary person would be led to believe that an offence had been committed, the accused would not be guilty under this section merely because, subjectively, he might have thought it probable that an offence had been committed and yet had failed to give information about it to the authorities as required by the law. *(1905) 2 CriLJ 133.*

(3) If the accused has reason to believe that an offence has been committed and intentionally omits to give information thereof, it has been held that he would be guilty under this section, although it might subsequently transpire that his belief was mistaken. *(1865) 2 Suth WR 1.*

(4) It seems to be pointless to prosecute a person for not giving information of an offence when it is found that actually no offence was committed merely because there were circumstances suggesting the commission of an offence. *(1865) 4 SuthWR 29 (Cr).*

(5) If at the time when the person is being tried for an offence under this section it is found that no offence has, as a matter of fact, been committed, the accused will not be guilty under this section. *1961 BLJR 35.*

(6) In a prosecution under S. 202, it is necessary for the prosecution to establish the main offence before making a person liable under S. 202. *AIR 1979 SC 1232.*

(7) A person who helps the murderers in a case to conceal the dead body necessarily knows about the murder and if he is one on whom the law imposes a duty to give information about the crime to the authorities, he would be guilty both under this section and S. 201 and under the provisions of S. 71, would be liable to the higher punishment under that section. *(1904) 14 MadLJ 226.*

3. Intentional omission to give information.—(1) Intention is a material ingredient and the gist of the offence under this section. *(1872) 9 BengLR (App) 31.*

(2) If omission is bonafide and not wilful, it is not offence under this section. *1947 MarLR 6.*

(3) If the corpus delicit is not established, there can be no conviction for the main offence nor for intentional omission under this section. *1961 BLJR 35.*

(4) If there is suspicion of a crime having been committed and the circumstances need to be reported under S. 40(d), Criminal P. C., an omission to give information would make one liable under S. 176 of this Code. *1887 Pun ReCr No. 20.*

(5) Part of the accused's confession in murder case though not sufficient to prove murder might make him liable for concealment of the act punishable under this section. *(1907) 6 CriLJ 141.*

4. "Legally bound to give information".—(1) It is necessary that the accused should be legally bound to give information. *AIR 1930 Mad 870.*

(2) If a person is legally bound to give information, the omission by him to give information of the commission of any of the offences specified will be an offence punishable under this section. *AIR 1925 Sind 257.*

5. Conviction.—(1) An offence under this section is not a minor offence in relation to an offence under S. 201 or to an offence under S. 19(a) and (f) of the Arms Act and consequently a person charged under S. 201 of the Code or under S. 19(a) and (f) of the Arms Act cannot be convicted under this section without a separate charge. *(1912) 13 CriLJ 18 (Sind).*

(2) An acquittal in regard to an offence under this section will bar a subsequent trial for an offence under S. 176 of the Code on the same facts. *(1906) 3 CriLJ 388.*

(3) Where a person convicted by the Magistrate of an offence under this section, appealed to the Sessions Judge against the conviction, and the Judge found that there was no evidence of any omission to give information of an offence, but remanded the case under Section 422 of the Criminal P.C. (5 of 1988), for additional inquiry, it was held that S. 422, Criminal P. C. (5 of 1898), would apply only to cases where the evidence is insufficient and not where there is no evidence and that consequently the order of remand could be sustained. *(1872) 9 BomLR (App) 31.*

6. "Whoever"—Main offender if can be convicted under this section.—(1) The word 'whoever' occurring at the opening part of S. 202 refers to a person other than the offender and has no application to the person who is alleged to have committed the principal offence. This is so because there is no law which casts duty on a criminal to give information which would incriminate himself. *AIR 1979 SC 1232.*

(2) A person who assists the murderers in a case in disposing of the dead body and fails to give information about the crime to the public authorities as required by law may be guilty of an offence both under S. 201 and under this section. *(1904) 14 MadLJ 226.*

7. Practice.—*Evidence*—Prove: (1) That the offence, which was not informed about, has been committed.

(2) That the accused knew or had reason to believe that such offence had been committed.

(3) That he omitted to give information thereof.

(4) That such omission was intentional.

(5) That the accused was legally bound to give information which he omitted to give.

8. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

9. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, knowing that on or about the—day of—, at—, knowingly committed the offence of intentionally omitting to give information respecting the commission of the offence which you were legally bound to give and thereby committed an offence punishable under section 202 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 203

203. Giving false information respecting an offence committed.—Whoever, knowing or having reason to believe that an offence has been committed , gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[7][*Explanation.*—In sections 201 and 202 and in this section, the word "offence" includes any act committed at any place out of [8][Bangladesh], which, if committed in [8][Bangladesh] would be punishable under any of the following sections namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.]

Cases and Materials

1. Scope.—(1) Even persons who are not legally bound to give information give any information which is false and misleading, this section is attracted. The section applies where information is voluntarily given and not when it is extracted by police *(14 CrLJ 252).*

(2) To convict under S. 203, the prosecution must prove that an offence has been committed, that the accused knew or had reason to believe that such offence had been committed, that he gave information with respect to that offence, that the information so given was false, that when he gave such information, he knew or believed it to be false. *1982 CriLJ 106 (MP).*

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7. Explanation was inserted by the Indian Criminnal Law Amendment Act, 1894 (Act III of 1894), s. 7.

8. The word "Bangladesh" was substituted for the word "Pakistan" by Act VIII of 1973, 2nd Sch. (w.e.f. 26 March 1971).

(3) It is necessary to establish the corpus delicti before a person can be convicted under S. 202 for omission to give information respecting that offence. The same principle will apply to a charge under this section. *(1865) 4 SuthWR (Cri) 29.*

(4) To justify a conviction for giving false information with respect to an offence under this section, it must, therefore, be proved, not only that the person charged had "reason to believe" that an offence had been committed but that the offence had actually been committed and that the accused knew or had reason to believe that it had been so committed. *(1873) 20 SuthWRCr 66.*

(5) The main essential of an offence either under this section or S. 177 of the Code is the giving of information known to the giver to be false. If the person making such report is legally bound to furnish information to public servant on the subject-matter of that report, then he commits an offence under S. 177, but if the report relates to an offence as to which the person making it, has the knowledge or belief specified in this section, then an offence under this section is committed. *(1913) 14 CriLJ 135 (Nag).*

(6) The information must be of a voluntary nature and not in answer to questions during the investigation of a criminal case. *(1913) 14 CriLJ 252 (Sind).*

(7) The expression "gives information" should be taken to mean volunteer's information. *I bid.*

(8) A person who gives false information to the police, accusing another of an offence of murder in order to screen the real offender, commits offences not only under Ss. 201 and 203 of the Code but also under S. 211. *AIR 1919 Cal 679.*

(9) It is only the person who actually gives the information that can be proceeded against under this section. A person who accompanies the giver of the false information does not commit an offence under this section. *AIR 1933 All 30.*

(10) This section applies only to persons voluntarily giving false information. Statements made in the course of examination by the police in the course of investigation are not within this section. *AIR 1920 UppBur 20.*

(11) The information contemplated by these sections must be proved to be false to the knowledge of the accused. Witnesses examined by police cannot be prosecuted for giving false information. *AIR 1962 Ker 133.*

2. Practice.—Evidence—Prove: (1) That an offence has been committed.

(2) That the accused knew or had reason to believe, that such offence had been committed.

(3) That he gave the information.

(4) That such information was with respect to that offence.

(5) That the information so given is false.

(6) That when he gave such information he knew or believed it to be false.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, knowing on or about the—day of—at—the offence of—was committed by omitting to give information respecting the said offence, to wit—which you knew or believed to be false, and thereby committed an offence punishable under section 203 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 204

204. Destruction of document to prevent its production as evidence.— Whoever secrets or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) An intentional refusal to produce and a secret dealing of the document will fall under this section *(40 CrLJ 75)*. The offence consists of its destruction with the intention of making it unavailable in evidence. This section may be read along with section 175 as it is merely an aggravated form of the offence described in that section.

(2) A case not covered by S. 477 may still be within this section. *AIR 1921 Cal 552.*

(3) In order that a person may be said to 'secrete' a document it is not necessary that its existence should have been unknown to others. A document, the existence of which is not known to others may be secreted in order to prevent any one from getting knowledge of its existence. A document the existence of which is known to others may also be secreted in order to prevent its being produced in evidence. *AIR 1931 Cal 184.*

(4) A mere refusal or a bona fide refusal to produce a document is not a secretion of the document. But a refusal to produce, with the intention, otherwise proved, of keeping the document secret, may be sufficient to prove a secretion within the meaning of the section. *AIR 1938 Sind 217.*

(5) Merely keeping the existence of a document secret is similarly ipso facto not 'secreting' the document within the meaning of the section unless it is so kept with the intention referred to in the section. *AIR 1938 Sind 217.*

(6) The accused was summoned to produce a document alleged to be in his possession. On his refusal to do so, a search warrant was issued under S. 93 of the Criminal P. C., but the document could not be found. In a charge under this section against the accused, the Magistrate discharged the accused on the ground that a mere refusal to produce the document did not amount to secreting the document. The High Court set aside the order and remanded the case. *AIR 1951 Cal 101.*

(7) Unless the document in question is one which the accused could be lawfully compelled to produce in evidence, he cannot be hauled up under this section. *(1911) 12 CriLJ 450(451) (DB)(Cal).*

(8) Where in the course of an investigation, a police officer got a panchayatnama rewritten by the same scribe and signed by the same Panchas in order to make it fair and tidy, and destroyed the original, it was held that the facts should be viewed in the proper perspective and the fair copy must be regarded as the only document lawfully required to be produced in evidence and that the former writing should be treated as rough notes designed for the preparation of the fair original document *(1912) 13 CriLJ 912.*

(9) Where the all-correct solution filed by the complainant in a cross-word competition, was not made available by the accused Managing Director and the complainant did not get the prize due to

him, the alleged suppression was held to be intentional within the meaning of this section. *(1957) 2 AndhWR 368.*

2. Practice.—Evidence—Prove: (1) That the accused secreted or destroyed the document or that he obliterated or rendered illegible the whole or any part of such document.

(2) That he was lawfully compellable to produce the same as evidence (a) in a Court of Justice or (b) in proceedings lawfully held by a public servant.

(3) That he did as in (1) with the intention of preventing the same from being produced or used as such evidence, or required to produce the same for that purpose.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—(secreted or destroyed) a document, to wit—which you may be lawfully committed to produce as evidence in a Court or any proceeding lawfully held before a public servant, to wit—or obliterated (or rendered illegible) the whole or a part of such document with the intention of preventing the same from being produced or used as evidence before a Court or in any proceeding lawfully held before public servant to wit—(or obliterated or rendered illegible) the whole or a part of such document after you were lawfully summoned or required to produce the same and thereby committed an offence punishable under section 204 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 205

205. False personation for purpose of act or proceeding in suit or prosecution.—Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) This section may be read along with section 196(1)(b) of the CrPC. This section deals with false personation in a suit or in a criminal prosecution and doing certain acts in an assumed character. Fraudulent intention is not required to constitute an offence under this section. The offence under this section is one against public justice and consists of deceiving the Court. When a person does not assume the name or character of another which he does not possess this section is not attracted *(38 CrLJ 216).* The offence of false personation is dealt with in sections 140, 170, 171, 416 and this section.

(2) Misappropriation—Denial of the charge, when receives reasonable support from the prosecution evidence and circumstances. When all the facts and circumstances of the case against accused persons are taken into account, in particular his conduct, there is a reasonable possibility that the explanation which he put forward is true and in consequence of which he is entitled to be acquitted. *Mir Ahmed Vs. State (1962) 14 DLR (SC) 258.*

(3) Fraud or dishonesty is not a necessary ingredient of an offence under this section and a conviction for false personation may be upheld even where the false personation is with the consent of the person personated. *(1904) 2 CriLJ 388.*

(4) Under S. 419 (cheating by false personation) a dishonest or fraudulent intent is an essential ingredient of the offence, as, in the absence of such intent, there will be no cheating at all as defined in S. 415, which is the basis of the offence under S. 419. *(1904) 2 CriLJ 388 (Cal).*

(5) "Personation" means assumption of likeness or character of another. A did two acts, one of getting a rent-note executed in the name of B, a fictitious person, and the other of posing to be B and producing the rent-note before the Sub-Registrar. It was held that there might be no personation in the first act inasmuch as it indicated a simple assumption of another name, but the second act definitely constituted personation by assuming another man's personality. *AIR 1961 All 62.*

(6) A man may personate another in the sense of assuming a character without any intention of seriously posing as being that other. There is no false personation in such a case because the personator's act is both intended and known to be mere imitation. *(1903) 5 Bom LR 138.*

(7) Where an accused representing himself as a servant of another accepts a notice that was to be served on the other person by writing the words to the effect that he received it on behalf of his master, it has been held that he does not falsely personate another but assumes the status of such person's servant. *AIR 1937 Pat 211.*

(8) To constitute the offence of false personation, it is not only necessary to assume a fictitious name but also to prove that the name was used as a means of falsely representing some other individual. *(1868-69) 4 MadHCR 18.*

(9) The accused should have assumed the name and character of the person he is charged with as having personated. The fact that he simply presented a petition in Court in the name of that individual was held to be insufficient to indicate an intention of falsely personating such person. *(1867) 8 SuthWRCr 80.*

(10) Personation must be of a known person, not of an imaginary person. *(1868-69)4MadHCR 18.*

(11) In order to constitute an act an offence under this section it must have been done in a suit or criminal prosecution. *(1900) 5 Mys CCR No. 142, p. 836.*

(12) Succession certificate proceedings (which are not 'suits' under the Civil Procedure Code) are not suits within the meaning of this section. *AIR 1940 Lah 514.*

(13) The presentation of a petition of compromise to the Registrar of the High Court in appeals pending before the High Court was held to be an act in a suit within the meaning of this section. *AIR 1927 Pat 199.*

(14) A prosecution under Act 3 of 1852 is a criminal prosecution within the meaning of this section. *1871 RatUnCrC 59.*

(15) It is not enough to prove merely the assumption of a fictitious name. It is further necessary to prove that the assumed name was used as a means of falsely representing another individual. *AIR 1935 Mad 913.*

(16) Where the offence is alleged to have been committed in, or in relation to, any proceeding in any Court, the complaint in writing of such Court is necessary under S. 195(1)(b) of Criminal P. C. to take cognizance thereof. *1977 CriLJ 1632.*

2. Practice.—Evidence—Prove: (1) That the accused falsely personated the person in question.

(2) That he made the admission, etc.

(3) That he made such admission etc. in such assumed character.

(4) That such admission etc. was made in a suit or in a criminal prosecution.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—falsely personated (name) in (specify the suit or criminal proceeding) before office of Judge or Magistrate, and in such assumed character (specify the admission or statement made or judgment confessed or process caused to be issued or bail or security given or any other act done) and that you thereby committed an offence punishable under section 205 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Complaint.—A complaint in writing of the Court before which the offence is committed, or of some other Court to which it is subordinate, is required under section 195, CrPC.

Section 206

206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.—Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Cases and Materials : Synopsis

1. *Scope.*
2. *"Whoever fraudulently removes, etc."*
3. *"Intending thereby to prevent".*
4. *"Taken in execution of decree or order".*
5. *"Decree or order.....in civil suit".*
6. *Complaint.*
7. *Evidence.*
8. *Practice.*
9. *Procedure.*
10. *Charge.*

1. Scope.—(1) This section deals with fraudulent withdrawal of property so as to defeat the just claims of those who have or may have a right over it. Fraudulent removal or concealment of the just claim of the others has been made punishable under this section. Where an undertaking is given to the Court that he will not transfer his property pending a proceeding but transfers the same, an offence under this section is committed *AIR 1940 Mad 271.*

2. "Whoever fraudulently removes, etc."—(1) The section uses the word "fraudulently" and not "dishonestly". The two words are defined separately in Ss." 25 and 24 respectively, of the Code and have different connotations. *1936 MadWN 1150.*

(2) The word "fraudulently" ordinarily connotes firstly deceit or secrecy and, secondly, an intention to cause injury to another person. *AIR 1940 Mad 271.*

(3) Where the accused judgment-debtor immediately after giving an undertaking to the Court not to transfer certain property, transferred the same in favour of his son by a sale deed with knowledge that his son would be in a position to claim the property as his own, it was held that the intention to cause injury was clearly established and that the fact whether or not the creditor would be able to circumvent the transfer by other proceedings was immaterial. *AIR 1940 Mad 271.*

(4) A whose property was attached in execution of a warrant by a Court, openly and in daylight removed the property in spite of protest; held that there was no element of concealment, secrecy or deception and consequently, no offence under this section was committed. *1962 (2) Cri LJ 555.*

(5) Handing over one's property which is not legally liable to be attached to avoid its being mixed up with other property liable to be attached for a decree does not amount to transfer as contemplated by this section. *AIR 1917 Bom 265.*

(6) There is nothing to prevent a judgement-debtor from disposing of his interest in an attached debt such action being legally justifiable cannot be treated as being "fraudulent" within the meaning of this section, and hence, in such a case the judgement-debtor will not be guilty under this section. *(1906) 3 Cri LJ 92 (All).*

(7) Where a person openly removes movable property so as to avoid its being taken in execution of a decree, etc., as mentioned in this section, such removal will not be "fraudulent" within the meaning of this section and hence such removal will not be an offence under this section. But such removal may be "dishonest" and may amount to theft. *AIR 1941 Pat 136.*

3. "Intending thereby to prevent".—(1) The particular intention necessary for the applicability of this section is an intention to prevent the property or interest therein from being taken as forfeiture or in satisfaction of a fine or in execution of a decree or order of Civil Court. Such an intention is totally different from the intention involved in the offence of criminal breach of trust under Section 406 infra. *AIR 1937 Bom 46.*

(2) Where property has already been taken as forfeiture or in satisfaction of a fine or in execution of a decree, a removal etc., of such property cannot be said to be made with intent "to prevent" its being so "taken" within the meaning of this section. *1888 All WN 237.*

(3) Where crops which had been attached were harvested by the accused with a view to save them from being ruined and not with the view of preventing their being taken in execution, it was held that no offence under this section was committed. *AIR 1938 Mad 976.*

4. "Taken in execution of decree or order".—(1) Where movable property is attached in execution of a decree under O. 21, R. 43 of the Civil P. C. and the attaching officer has handed over the same to a third person on the latter's executing a bond undertaking to produce the same whenever called for, the property was held to be taken in execution within the meaning of this section, and a subsequent removal of it from such custody cannot be said to be so done in order to prevent it from being 'taken in execution' and S. 206 would not apply to such a removal. *AIR 1937 Bom 46.*

(2) A obtained a motor car from B under a hire-purchase agreement under which the car was to remain the property of B until A had paid the amount due to B. On the default of payment B obtained

a decree against A for the amount. Subsequent thereto A transferred the car to another. It was held that on the decree for money being obtained, the agreement of hire-purchase became merged in the decree, and put an end to the title of B to the car, that the transfer of the car by A was transfer of his property which if fraudulently made with the intention of preventing B from taking it in execution of his decree, would render A liable under this section. *AIR 1918 Cal 663.*

5. "Decree or order ..... in civil suit".—(1) A property under distraint which would be governed by S. 145 of the Bengal Rent Act, (10 of 1859) cannot be said to be "taken in execution of a decree or order". *(1869) 2 Beng LR (SN) (iv).*

(2) The words "intending thereby to prevent that property from being taken in execution of a decree or order which has been made or which he knows to be likely to be made by a Court of Justice in a civil suit" refer to a civil suit which is actually pending before a Court. *AIR 1930 Rang 128.*

(3) A certificate issued under the Public Demands Recovery Act (Beng. Act I of 1895) has the force and effect of a decree of a Court as regards the remedies for enforcing the same. Money due under such certificate must be regarded as money due under civil Court decree and removal of crops under attachment in execution of such a certificate amounts to an offence punishable under this section. *(1900) 5 Cal WN 291.*

6. Complaint.—(1) Where the offence under this section is alleged to have been committed in, or in relation to any proceeding in any Court, a complaint by such Court or by a Court to which it is subordinate is necessary before a Court can take cognizance of such offence. *1933 Mad WN 722.*

(2) Where the act of the accused fell within two sections, namely, S. 379 and S. 206, it was held that a complaint is necessary before taking cognizance of the case. *1936 Mad WN 212.*

(3) Where attached property was left in the custody of sureties and the accused removed the same from such custody after committing dacoity armed with deadly weapons, it was held that the claimants constituting the offence under Ss. 206 and 395 are not only not identical but that S. 395 was a much graver offence involving additional ingredients and that no complaint under S. 195, Criminal P. C. was necessary before inquiry into a charge of dacoity . *AIR 1948 Mad 115.*

(4) Where the facts amount to an offence requiring a complaint and also another offence not requiring complaint the prosecution cannot evade the provisions of law requiring a complaint, by prosecuting the accused for the offence not requiring a complaint whether such offence constitutes the major or the minor one of the two offences. *AIR 1966 SC 523.*

(5) A complaint in writing of the Court before which the offence is committed, or of some other Court to which it is subordinate, is required under section 195, CrPC.

7. Evidence.—(1) Evidence of fraudulent transfers other than those for which the accused is being prosecuted would be admissible under. Ss. 14 and 15 of the Evidence Act to prove either that those transfers were parts of the same transaction or that the transfers which were specified in the charge were made fraudulently. *(1892) ILR 16 Bom 414.*

8. Practice.—Evidence—Prove: (1) That the sentence of fine had been or was, to the knowledge of the accused, likely to be pronounced, or that the decree or order had been, or was to the knowledge of the accused, likely to be made.

(2) That it was a Court of Justice, or other competent authority pronouncing or about to pronounce such sentence, or that it was a Court of Justice making or about to make such decree or order in a civil suit.

(3) That the property in question or interest therein had become or was likely to become, liable to be taken as forfeiture of such fine, or taken in execution of such decree or order.

(4) That the accused removed, concealed, transferred or delivered such property or interest therein with intent thereby to prevent such property from being taken.

(5) That he did as above with intent to defraud.

9. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

10. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—fraudulently removed (or concealed) or transferred or delivered to XY, a certain property (specify it) intending thereby to prevent the said property from being taken as forfeiture (or fine) under the sentence which had been pronounced (or which you knew to be likely to be pronounced) by (specify the Court) in criminal case No—or from being taken in execution of the decree which had been made by (specify the Court) in civil suit No.—and that you thereby committed an offence punishable under section 206 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 207

207. Fraudulent claim to property to prevent its seizure as forfeited or in execution.—Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) This section deals with the receiver, acceptor or claimer of property to prevent as a forfeiture. It punishes the accomplice. This section should be read along with sections 20, 25 and 206 of the Penal Code.

(2) A creditor commits no fraud who anticipates other creditors and obtains a discharge of his debt by the assignment of any property which has not already been attached by another creditor. *1876 Rat Un Rep Cri Cas 110.*

(3) Where the offence is alleged to have been committed in, or in relation to, any proceeding in any Court, no Court shall take cognizance of the offence except on the complaint in writing of such Court as required by Section 195(1)(b), Criminal P. C. *1977 Cri LJ 1329 (Andh Pra).*

(4) The petition of complaint discloses no offence under the various sections of the Penal Code. Cognizance has been taken against the accused petitioner under sections 193/207 of the Penal Code. Allegation by the complainant that the accused has no subsisting interest in the property in question thus raises question of civil dispute, not a criminal issue. Criminal Courts are not to be utilised for adjudication of civil disputes—Court strongly disapproving resort to criminal proceeding for harassing a person with motive of settling civil disputes. Questions of fact are to be tried on evidence by the trial court. *39 DLR 214.*

2. Practice.—Evidence—Prove: (1) That the sentence of fine had been or was, to the knowledge of the accused, likely to be pronounced, or that the decree or order had been or was, to his knowledge, likely to be made.

(2) That it was a Court of Justice, or other competent authority, pronouncing or about to pronounce, such sentence; or that it was a Court of Justice making, or about to make, such decree or order in a civil suit.

(3) That the property in question or interest therein had become liable to be taken as forfeiture for each such fine, or taken in execution of such decree or order.

(4) That the accused accepted, received or claimed such property or interest with intent to defraud, or that he practised a deception touching the right thereto.

(5) That he had no right or rightful claim thereto.

(6) That he did as above in order to prevent such property or interest from being so taken.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—fraudulently accepted (or received or claimed) certain property or interest in property to wit—knowing that you had no right or rightful claim to the same (or practised deception touching a right to certain property or an interest in certain property to wit—) by—intending thereby to prevent that property or interest in property from being taken as a forfeiture or in satisfaction of a fine under a sentence which had been pronounced or which you knew to be likely to be pronounced by the Court of—(or by a competent authority to wit—) or from being taken in execution of a decree or order which had been made or which you knew likely to be made by the—Court in suit and that you thereby committed an offence punishable under section 207 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Complaint.—A complaint in writing of the Court before which the offence is committed, or of some other Court to which it is subordinate, is required under section 195, CrPC.

Section 208

208. Fraudulently suffering decree for sum not due.—Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person, or for any property

or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Materials

1. Practice.—Evidence—Prove: (1) That the accused caused, or suffered, the decree or order to be passed against him.

(2) That such decree or order was for a sum not due by the accused; or for a sum larger than was due; or for property or interest therein to which the decree-holder was not entitled.

(3) That the accused did as in (1) with intent to defraud.

Or prove the following points:

(1) That a decree against the accused had been satisfied.

(2) That he, afterwards, caused or suffered such decree or order to be executed against him.

(3) That such execution was for that in respect of which it had been so satisfied.

(4) That the accused did as above with intent to defraud.

2. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—fraudulently caused (or suffered) a decree (or order) to wit—in suit No.—of the Court of—to be passed against you, and which was for a sum not due (or for a larger sum than is due to such person or for any property or interest in property to which the decree-holder was not entitled) or fraudulently caused (or suffered) a decree (or order) to wit—decree No—in suit No—decided by the Court—on—, to be executed against you after it had been satisfied (or for anything in respect of which it had been satisfied) and thereby committed an offence punishable under section 208 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Complaint.—A complaint in writing of the Court before which the offence is committed, or of some other Court to which it is subordinate, is required under section 195, CrPC.

Section 209

209. Dishonestly making false claim in Court.—Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice

any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Cases and Materials : Synopsis

1. *Scope.*
2. *False claim.*
3. *"Fraudulently or dishonestly".*
4. *"In a Court of Justice".*
5. *"Which he knows to be false".*
6. *Complaint.*
7. *Jurisdiction to make inquiry or complaint.*
8. *Evidence.*
9. *Procedure.*
10. *Practice.*
11. *Charge.*

1. Scope.—(1) This section relates to false and fraudulent claims in a Court of Justice. It is much wider than the above section as it applies to a person who is acting fraudulently or dishonestly.

(2) Accused charged under sections 209/34 and 420/34—Further charge under section 5(2) of Act II of 1947—Acquitted of the charge under sections 209/34 and 420/34 but convicted and sentenced under section 465—There was allegation of fabrication of document for establishing false claim before a Law Court—Question as to validity of conviction and sentence under section 465—Irregularity, whether curable. The petitioner and 2 others faced trial under sections 209/34 and 420/34. It was clear that there was allegation of fabrication of documents with a view to establish a false claim in a proceeding before a Court of Law. The petitioner had, therefore, the notice of allegation and fabrication of document. Held—The ingredients of the offence punishable under section 209 and those of an offence punishable under section 465 are almost similar. It was at best irregularly curable under section 537 of the Criminal Procedure Code. *2 BSCD 248.*

(3) This section relates to false and fraudulent claims in a Court. *1884 Pun Re(Cr) No. 25.*

(2) In order to constitute the offence it is not necessary that the whole of the claim should be false. The section would apply even if a part of the claim is false. *1890 All WN 1(2).*

(4) A false claim in a Court of Justice does not amount to the offence of extortion or of an attempt to commit extortion. *AIR 1917 Oudh 117.*

(5) This section relates to the offence of filing a false suit (i. e. a suit based on a false claim) which is a civil remedy. *(1869) 12 Suth W R (Cr) 37.*

2. False claim.—(1) An attempt to execute a decree cannot be described as making a false claim. *AIR 1946 Nag 350.*

(2) Where an application for execution was made not only for the amount decreed, but also for amounts not decreed, it was assumed that Section 209 would apply if the accused acted fraudulently, but that in the particular case the section did not apply as the accused did not act fraudulently. *AIR 1936 All 164.*

(3) Cases where an application for execution was made not only for the amount decreed but also for amounts not decreed may come under Section 210 which inter alia makes it an offence for a person to fraudulently cause a decree or order to be executed after it has been satisfied or for anything in respect of which it has been satisfied, or to fraudulently suffer or permit any such act to be done in his name. *AIR 1931 All 305.*

(4) This section does not refer to a document produced in evidence to substantiate the relief asked for in a suit. "claim" cannot be confused with A document on which the claim is based, for such document is only the evidence by which the claim is attempted to be proved. *AIR 1916 Mad 1105.*

(5) Where there was a conspiracy to file a false claim and to obtain or attempt to obtain a decree in respect thereof, the object of the conspiracy being one and indivisible, it is not open to the Magistrate to treat the conspiracy as having two objects. There can be one indivisible object within contemplation of both of the two Sections 209 and 210. *AIR 1947 Sind 49.*

(6) Where the suit was dismissed as false and malicious on 3 February 1913 and the application for sanction to prosecute under this section was made on 20 November 1913 it was held that the delay did not imply mala fides and that it would not be proper to refuse on this ground the application for sanction (now complaint). *AIR 1915 Cal 457.*

3. "Fraudulently or dishonestly".—(1) Where a plaintiff institutes a suit against a wrong person of a similar name on a genuine promissory note, but not dishonestly and intentionally, no offence under this section or Section 193 of the Code is committed. *AIR 1915 Low Bur 59.*

4. "In a Court of Justice".—(1) The words in the section are "a Court of Justice" and not "a Court of Justice having jurisdiction". It is therefore immaterial whether the Court in which the false claim was instituted had jurisdiction to try the suit. *AIR 1919 All 323.*

(2) The manager under the Encumbered Estates Act is not a Court and a proceeding before him is not a suit inasmuch as he does not decide disputes between parties. A fraudulent claim preferred before him would not, therefore, be covered by this section. *AIR 1935 Pat 515.*

5. "Which he knows to be false".—(1) It is not sufficient for the prosecution, in a charge of an offence under this section to prove that the claim made by the accused was believed by him to be false or that the accused had reason to believe it to be false or that he did not believe it to be true. It must be proved that the accused knew the claim to be false. *(1894) 17 MysLR No. 494, p. 722.*

(2) The mere fact that the Court does not accept the plaintiff's claim and dismisses his suit will not prove that he knowingly made a false claim. *(1921) 22 CriLJ 467 (Pat).*

6. Complaint.—(1) An offence under this section, committed in, or in relation to, any proceeding in Court cannot be taken cognizance of by any Court except upon a complaint as required by Section 195, Criminal Procedure Code. *AIR 1924 Cal 502.*

(2) Courts have to be astute to see that where the facts of a case really amount to an offence under this section, the provisions of Section 195, Criminal Procedure Code requiring the complaint of the concerned Court are not evaded by framing the complaint as one falling under some other section of the Code, as for instance, Section 500 (defamation). *AIR 1935 Sind 81.*

(3) Before giving a complaint the Court should consider whether in the interest of justice it is expedient to make the complaint. Great caution is required for setting the criminal law in motion and without any reasonable foundation for the charge, no complaint should be made. The danger of parties vindictively proceeding against their opponents has always to be kept in mind. *AIR 1966 Mad 456.*

(4) Mere dismissal of suit, in the absence of clear finding that the suit was false and was brought with intent to injure the defendant, would not justify complaint being made. *AIR 1920 Pat 548.*

(5) A compromise in a suit for money due on a handnote is, however, no bar to a complaint being made for an offence under this section. *AIR 1922 Cal 412.*

(6) A complaint in writing of the Court before which the offence is committed, or of some other Court to which it is subordinate, is required under section 195, CrPC. The complaint must be made by the Court before which the plaint for the false claim is filed and not by the Court to which the case is transferred after setting aside of the ex parte decree *(33 CrLJ 860).* Where a plaintiff is called upon to

show cause why he should not be prosecuted under this section, he should be afforded every opportunity of adducing evidence in support of his claim and to remove any doubt in the mind of the Court as to the falsity of the case *(21 CrLJ 158).*

7. Jurisdiction to make inquiry or complaint.—(1) Mutation proceedings before X dismissed—Y later succeeding X and passing order under S. 476, Criminal P. C. sanctioning prosecution under the section—Y was held to have no jurisdiction to pass the order—Proper course for him was to give sanction under Section 195, Criminal P. C. *AIR 1917 Pat 35.*

(2) The subordinate Judges who have been empowered to entertain civil appeals will be Courts to which appeals "ordinarily lie" within Section 195(3), Criminal P. C. *AIR 1916 Mad 1105.*

(3) District Judge of one area has jurisdiction to take action against petitioner of another area under S. 476, Criminal P. C. for an offence committed under S. 209 or 210, P.C., if these offences, which are alleged to have been committed, are brought to the notice of the District Judge in the course of a judicial proceeding. *AIR 1916 Pat 97.*

8. Evidence.—(1) Prosecution based on the allegation that a false claim was wilfully presented will have to prove affirmatively that the case was a false one. *AIR 1932 Pat 243.*

9. Procedure.—(1) Where the plaintiff is called upon to show cause why he should not be prosecuted, he should be afforded every opportunity of adducing evidence in support of his claim and to remove any doubt in the mind of the Court as to the falsity of the case. *AIR 1920 Pat 548.*

(2) Not cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

10. Practice.—Evidence—Prove: (1) That the claim in question was made in a Court of Justice.

(2) That the accused made such claim.

(3) That such claim was a false one.

(4) That the accused when making such claim knew it to be false.

(5) That he made such claim, intending to defraud, or to cause wrongful gain or loss, or annoy the person in question.

11. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—fraudulently (or dishonestly or with intent to injure or annoy any person made a calim to wit—(specify the particulars of the calim) in Suit No.—of—in the Court of—and which you knew to be false and thereby committed an offence punishable under section 209 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 210

210. Fraudulently obtaining decree for sum not due.—Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with

imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Cases and Materials : Synopsis

1. *Scope and applicability.*
2. *"Fraudulently obtains a decree" etc.*
3. *"Fraudulently causes a decree to be executed".*
4. *Proceeding on false claim in Court having on jurisdiction.*
5. *"After it has been satisfied".*
6. *Complaint—Necessity of.*
7. *Evidence.*
8. *Practice.*
9. *Procedure.*
10. *Charge.*

1. Scope and applicability.—(1) Prosecution for false charge—Whether complaint by Magistrate is necessary in respect of a case ending in a final report—Orders passed by a Magistrate in a case initiated on the basis of an FIR lodged by an informant ending in discharge of the accused or acceptance of Final Report are not proceeding in a Court within the meaning of section 195, CrPC as it is merely in the category of "Police Proceeding"—In such a case embargo placed by section 195 is not applicable and no complaint by Magistrate for prosecution on account of false charge is necessary. The Additional Sessions Judge acted illegally in allowing the appeal on the ground of non-filing of complaint by the Magistrate (*Ref: 38 DLR 321). 8 BLD 517.*

(2) This section punishes a plaintiff for his fraudulent acts whereas S. 208 punishes the defendant for his fraudulent acts. Thus, a fraudulent attempt to get the decree executed after it has been satisfied is punishable under this section. It is immaterial whether the decree was satisfied in full or only in part. *(1869) 12 Suth WR (Cr) 37.*

(3) Where the purpose of a conspiracy was to file a false claim and to obtain or attempt to obtain a decree in respect of that false claim, this section read with Section 120B of the Code would apply and the fact that a decree was not passed would not make Section 210 inapplicable, since, if the Court holds the claim to be false, no decree could be passed. *AIR 1947 Sind 49.*

2. "Fraudulently obtains a decree" etc.—(1) Fraudulently obtaining a decree or a fraudulent execution of a decree for a sum not due would be punishable under this section and the fact that the Court had no power to pass the decree would be immaterial. *AIR 1919 All 323.*

(2) The accused's liability is not affected by the fact that the order of attachment fraudulently obtained is set aside on objection being made. *AIR 1931 All 305.*

(3) The offence is committed as soon as a decree is fraudulently obtained or executed and thought the fact that the decree has not been set aside might be evidence to prove that there was no fraud, it can in no way debar a prosecution for an offence under this section *(1906) 3 CriLJ 365.*

(4) Where a dealer in saltpetre overstated the claim in his suit against the Railway Company in order to claim more damages, it was held that his action was fraudulent. *AIR 1924 Nag 35.*

(5) While deciding the question of conspiracy to file a false claim, the Court has to consider its object. Where the conspiracy was to file a false claim and obtain a decree in respect thereof, the object should be one and indivisible and hence, the Magistrate is not justified in splitting up the object and then convicting the accused under Section 120B/209, P.C. and to order their acquittal under S. 120B/210, P.C. *AIR 1947 Sind 49.*

3. "Fraudulently causes a decree to be executed".—(1) The mere making of an application for execution cannot be said to be causing the decree to be executed' within the meaning of this section. If

the execution application is dismissed as satisfied out of Court, it cannot be held that the decree was "caused to be executed". *1902 Pun Re (Cr) No. 13 (p. 39).*

(2) The offence of fraudulently causing a decree to be executed is not completed until the judgment-debtor appears and has no objection or has objection which has been overruled and the Court has therefore proceeded to order execution. *1902 Pun Re Cr No. 13 (p. 39).*

(3) Where the decree-holder gets the judgment-debtor's property attached in execution for an amount not due to him under the decree he is prima facie guilty of an offence under this section. *AIR 1931 All 305.*

(4) Where a decree-holder omitted to enter part satisfaction of a decree in the execution proceedings and the judgment-debtor did not raise any objection to the excess claim for nearly 2 years till the full decretal amount was recovered, it was held that the omission to enter part recovery cannot be said to be fraudulent within the meaning of this section. *AIR 1929 Lah 676.*

(5) Where the facts do not establish a criminal intention but only a bona fide mistake, there is no offence under this section. *(1909) 11 CriLJ 202 (All).*

(6) If the decree-holder commits an honest mistake in failing to give credit for certain repayment in execution proceedings but on realising the mistake he gets the execution dismissed, his act cannot be held to be fraudulent. *AIR 1946 Nag 350.*

(7) Judgment-debtor making payments in kind—Decree-holder concealing this fact and taking out execution—Offence falls under this section and not S. (406 criminal breach of trust)—Complaint under S. 195 necessary—Offence cannot be treated as one under S. 406 so as to evade provisions as to sanction. *AIR 1936 Sind 123.*

4. Proceeding on false claim in Court having no jurisdiction.—(1) The fact that the Court from which a decree is fraudulently obtained on a false claim or in which a decree is fraudulently executed for a sum not due or after the decree has been satisfied, has no jurisdiction will not affect the question of the criminal liability of the person who resorts to such abuse of legal process, as the applicability of the section does not depend on the question whether the Court by which the decree is passed or executed has jurisdiction to do so. *AIR 1919 All 323.*

5. "After it has been satisfied".—(1) The word 'satisfied' is to be understood in its ordinary meaning and not as referring to decrees the satisfaction of which has been certified to the Court under O. 21, R. 2, Civil P. C. *(1886) ILR 10 Bom 288.*

(2) Order 21, Rule 2, P. C. provides that no payment not certified shall be recognised by the executing Court. But that rule is no bar to a criminal Court taking cognizance of an offence under this section in a case in which the decree-holder is charged under this section for fraudulently causing that decree to be executed after it has been satisfied out of Court, which satisfaction, however, has not been certified to the executing Court under O. 21, R. 2 of the C. P. C. *(1897-1901) 1 Upp Bur Rul 278.*

(3) Order 21, Rule 2 of the Civil P. C., does not prohibit the executing Court from making an enquiry under Section 340, Criminal P. C. into an alleged adjustment with a view to filing a complaint of an offence under this section. *AIR 1931 Rang 148.*

6. Complaint—Necessity of.—(1) A prosecution for an offence under this section requires a complaint to be made by the Court in which or in relation to any proceeding in which, such offence is alleged to be committed or of some other Court to which such Court is subordinate. *(1887) 10 Mys LR No. 320 p. 1048.*

(2) When a plaintiff instituted a suit first in Court X and obtained a degree for part only of the claim, and thereafter instituted another suit in Court Y for the amount disallowed by Court X in the first suit it was held that the suit in Court Y cannot be said to relate to proceedings in Court X and that the proper Court to prefer the complaint was Court Y and not Court X. *AIR 1925 Lah 524.*

(3) Before making complaint of offence under this section, Court ought to satisfy itself that there is a prima facie case for proceeding against the accused under this section. *1888 Rat Un Cr C 374.*

(4) A complaint cannot be refused to be made on the ground that the judgment-debtor has not been prejudiced. *AIR 1917 Lah 209.*

(5) The danger of parties vindictively proceeding against their opponents has always to be considered before making or refusing to make a complaint. *AIR 1966 Mad 456.*

(6) Where the facts disclose primarily an offence under this section and also constitute subsidiary offences the necessity for a complaint cannot be avoided by omitting this section from the complaint and mentioning only the subsidiary offence. *AIR 1944 Sind 130.*

(7) The provisions of law requiring the complaint of a Court or other authority for a certain offence being taken cognizance of, cannot be evaded by ignoring the features of the case which bring it within such provisions and by treating the case as relating to some other offence in regard to which the provisions do not apply. *AIR 1966 SC 1775.*

(8) A complaint in writing of the Court before which the offence is committed or of some other Court to which it is subordinate is required under section 195, CrPC.

7. Evidence.—(1) The fact that the decree has been set aside by the civil Court on the ground of fraud is no evidence in a criminal Court trying an offence under this section, that the decree was obtained fraudulently. However the fact that the decree had not been set aside might be evidence to show that it had not been obtained by fraud. *(1906) 3 CriLJ 360 (Cal).*

8. Practice.—Evidence—Prove: (1) That the accused obtained the decree or order or suffered or permitted the same to be done in his name.

(2) That such decree or order was for a sum not due or that it was for a sum larger than what was actually due, or that it was for property or an interest therein, to which he was not entitled.

(3) That the accused did as above with intent to defraud.

9. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

10. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—fraudulently obtained a decree or order in suit No—of—against you of—for Tk—which was not due or was a larger sum than was due (or for any property or interest in property to which you are not entitled or fraudulently caused a decree or order) to be executed against—after it had been satisfied (or fraudulently suffered or permitted any such act to be done in your name) and thereby committed an offence punishable under section 210 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 211

211. False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and, if such criminal proceeding be instituted on a false charge of an offence punishable with death, [4][imprisonment] for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cases and Materials : Synopsis

1. Scope of the section.—(1) The institution of criminal proceedings against a person is generally by charging that person with having committed an offence. But not necessarily so, for there can be criminal proceedings, without a charge of the commission of an offence and there can be a charge made of the commission of an offence without the institution of criminal proceedings. Though the two expressions overlap and are therefore not mutually exclusive. They are not co-extensive in meaning and it is to rope in all cases covered by the two expressions that the Legislature has used both in the first part of section 211 Penal Code. The second part of the section provides for an aggravated form of the offence described in the first part *(1966 CriLJ 26).* To substantiate a charge of abetment of offence under section 211 it is necessary to prove that the abettor was aware of the falsity of the complaint.

(2) *Venue.*—The place where the letter falsely charging a person with having committed the offence is sent and not the place where it is posted decides the jurisdiction of the Court *(49 CriLJ 335)*. Where the offence under section 211 is committed in two places but only one place is mentioned, by mention of the only one place the accused is not misled in his defence and this does not affect his conviction*(AIR 1936 Pat 358)*.

(3) *False charge made to police and not to Magistrate.*—Where a false charge has been made only to the police, or when the person making the false charge has not applied to the Magistrate and where no Court proceedings whatever have been caused, then no complaint is necessary *(28 CriLJ 934)*. Where the offence consists in giving false information to the police and the case does not go further than a police inquiry the offence falls within para. 1 of the section and not within para. 2. In such a case it is competent to the Magistrate to proceed on the report of the police without any formal complaint under section 476 of the CrPC *(32 CriLJ 314)*.

(4) Prosecution under section 211 will not lie for lodging false FIR unless it is first judicially decided that the FIR lodged is a false one. So long as a complaint is not dismissed under section 203 of the CrPC or otherwise judicially determined, no proceeding can be instituted under section 211 of the Penal Code, against the person lodging that complaint. The original complaint must be first disposed of according to law before such proceedings can be taken. In the instant case the allegation in the FIR lodged by the petitioner has not yet been judicially determined as to whether it is false or otherwise and without that being done it cannot be prejudged that the FIR lodged by the petitioner is false. As such the petitioner cannot be prosecuted at this stage on the allegation that he had lodged false FIR *(Ref 1 PLD 477 Lah). 28 DLR 115.*

(5) Definite accusation necessary.—The mere lodging of information with the police is not a charge within the meaning of section 211, Penal Code. There must be definite accusation made if a charge under section 211, Penal Code is to be substantiated. *6 PLD Bal 14.*

(6) The complaint of X against Y, Z and others under section 394 P. C. was found by the police to be false and thereupon X was prosecuted under section 211 for making false charge. X, however, moved the Court against police report and the Court found a prima facie case against Y, Z and others, but ultimately they were acquitted of the charge under section 394 P. C. The question thus arose whether a charge under section 211 would lie against X. Held: In the circumstances of the case, no charge would lie against X under section 211. *Hazi Sadaruddin Vs. State (1961) 13 DLR 321=1962 PLD 543.*

(7) Moving a Magistrate under section 107, Criminal Procedure Code, becomes "criminal proceeding" within the meaning of section 211 after issue of notice, to respondent—Before issue of notice false or malicious information to Magistrate under section 107, Cr. P. C. covered not by section 211, but by section 182, P. C. *(1949) PLR (Lah) 477.*

(8) Prosecution for false charge—Whether complaint by the Magistrate is necessary in respect of a case ending in final report—Order passed by the Magistrate in a case initiated on the basis of an F.I.R. ending in discharge of the accused or acceptance of the Final Report are not proceedings in a Court within the meaning of Section 195, Cr. P. C. as they are merely "Police Proceedings"—In such a case the embargo placed by Section 195, Cr. P. C. is not applicable and no complaint by the Magistrate for prosecution on account of a false charge is necessary—The Additional Sessions Judge acted illegal in allowing the appeal on the ground of non-finding of complaint by the Magistrate. *Abdul Quader Vs. Serajuddowal and other 8 BLD (HCD) 517.*

(9) This section deals with two categories of cases:

(a) institution of criminal proceeding against a person, and

(b) making of false charge against a person with having committed an offence. *AIR 1923 Oudh 4.*

(10) In either of the categories of cases under this section, it is essential that the person before whom the accusation is made must be in a position of authority to get the offender punished. *AIR 1923 Oudh 4.*

(11) It is in the interest of justice that a man who brings a false charge or institutes criminal proceeding with intent to injure another and without just and proper ground should be prosecuted if a prima facie case is made out against him. *(1934) 35 CriLJ 1392 (Lah).*

(12) A Court has authority to make complaint under this section against the person who made a false complaint, even though the person, complained against, desires that no action should be taken. *AIR 1928 All 333.*

(13) To constitute an offence under this section it must be established;

(a) that the accused instituted or caused to be instituted a criminal proceeding against a person;

(b) that he falsely charged a person with having committed an offence;

(c) that he did so with intent to cause injury to such person;

(d) that he did so knowing that there was no just or lawful ground for such proceeding or charge. *AIR 1964 SC 177.*

(4) The ingredients of this section and of malicious prosecution are parallel. The words "with intent to cause injury to any person, institutes any criminal proceeding, knowing that there is no just or lawful ground" as used in this section are more or less equivalent to the expression "maliciously prosecutes any person without any reasonable or probable cause" which is the foundation of an action for malicious prosecution. *AIR 1966 All 66.*

(15) To constitute the offence provided for by S. 211, it is sufficient that a false complaint is made against any person. It is not necessary that summons should be issued upon such complaint. *(1904) 1 CriLJ 7 (All).*

2. "Whoever".—(1) The section applies not only to a private individual but also to a police officer who brings a false charge of an offence with intent to injure another person. *(1969) 11 SuthWR (Cr) 2.*

(3) The section is not inapplicable to a witness called in support of a false charge if he was the prime mover in the false charge and caused the proceeding to be instituted. *1882 All WN 84.*

3. "With intent to cause injury".—(1) Where false information is given to a person in authority but the intention is not to set the criminal law in motion, against any particular person the offence of giving false information may fall under S. 182 but will not amount to an offence under this section. *AIR 1944 Mad 391.*

(2) The fact that the complaint fails to prove the charge made by him does not necessarily show that the charge was false or that it was made with intent to cause injury. *(1912) 12 CriLJ 897.*

(3) The admission of making a false charge does not necessarily involve an admission of an intent to cause injury. *1886 AllWN 66.*

(4) The question, whether the accused intended to cause injury to a person by instituting a criminal proceeding against him or by making a false charge against him, is one of inference form the facts and circumstances of the particular case. *AIR 1919 Cal 679.*

(5) Where the person charged is innocent and the accused must have known that there was no just or lawful ground for the proceeding or the charge the intention of the accused to cause injury to such person can be inferred from the relation of the parties. *AIR 1939 Pat 178.*

4. "Criminal proceeding".—(1) A criminal procedure is a step taken in a criminal Court according to the laws of Criminal Procedure for the purpose of preventing a crime or for prosecuting a person for the commission of crime. *AIR 1949 Lah 28.*

(2) It is not necessary, in order to constitute a proceeding a criminal proceeding that a crime should have been committed. *AIR 1949 Lah 28.*

(3) A security proceeding instituted by a Magistrate under the preventive sections (Sections 107—110) of the Criminal P. C. on the motion of a party will be a "criminal proceeding" for the purpose of this section. *AIR 1949 Lah 28.*

(4) A proceeding initiated by a party before a Magistrate may not, at the outset, be a criminal proceeding but may become so at a subsequent state. Thus under the worker's Breach of Contract Act (13 of 1859), (now repealed) where a master or employer was entitled to apply to a Magistrate, under certain circumstances, for an order for the return of the advance received by a workman and the Magistrate was empowered to pass such an order, and was also empowered to inflict punishment for disobedience of the order it was held that the application was not a criminal proceeding up to the stage of the disobedience of the order but became a criminal proceeding on the disobedience of the order and the Magistrate's action of inflicting punishment on the employee. *AIR 1920 Mad 553.*

(5) Where a party moves the Magistrate to take action under S. 107 of the Criminal P. C., against a person, the proceeding does not become a criminal proceeding until the Magistrate issues notice to such person, and that if the Magistrate refuses to issue such notice, there is no criminal proceeding. *AIR 1949 Lah 28.*

(6) An application to take proceedings under the Contempt of Courts Act can be regarded as the institution of criminal proceeding. *AIR 1964 SC 1773.*

5. Proceedings for contempt of Court.—(1) The institution of proceeding for contempt of Court against any person with the knowledge that there is no just or lawful ground for starting such proceeding is an offence under this section. *AIR 1964 SC 1773.*

6. "Institutes criminal proceedings".—"Falsely charges with having committed an offence".—(1) A person who sets the criminal law in motion by making a false charge to the police of a cognizable offence institutes criminal proceedings within the meaning of this section and if the offence charged falls within the description in the latter part of the section he is liable to punishment there provided. *AIR 1964 SC 1773.*

(2) The expression "criminal proceeding" in this section refers to a criminal proceeding in a Court. In such a case however, there "would be the charge" of an offence and the person giving the false information to the police would be liable for "falsely charging a person" which is also an offence under this section, apart from the "institution of criminal proceedings" against a person. *(1862-1863) 1 MadHCR 30.*

(3) A criminal prosecution can be "instituted":

(a). by a complaint as defined in S. 2(d) of the Criminal P. C. *1 CriLJ 957 (958) (Lah);*

(b) by moving the Court by petition under the provisions of the Criminal P. C. which may not amount to a complaint as so defined e.g., by a petition under S. 107 of the Criminal P. C. *AIR 1949 Lah 28;*

(c) by a police report to the Court *(1942) 43 CriLJ 775;*

(d) by making a false charge of a cognizable offence to the police *AIR 1964 SC 1773.*

(4) Where the Magistrate has no jurisdiction to take cognizance of the complaint or petition or report made to him it cannot be said that there is any institution of criminal proceeding before him. *(1909) 9 CriLJ 77.*

(5) The following do not constitute the institution of criminal proceedings:

(a) Merely giving evidence in a case. *AIR 1936 Lah 828(829) : 37 CriLJ 1043.*

(b) A mere statement of facts or communication of suspicion. *AIR 1963 Ker 152.*

(c) Charge not made to Magistrate or police empowered to take cognizance or investigate it. *AIR 1944 Mad 391.*

7. "Institutes or causes to be instituted".—(1) Where A in collusion with B institutes a criminal proceeding in a Court: B may be said to cause the proceeding to be instituted though he was not a party to the proceeding and may be proceeded against under this section. *AIR 1930 Cal 671.*

8. "Or falsely charges".—(1)The expression "falsely charges" in this section means "falsely accuses". *AIR 1959 Cal 293.*

(2) Accused will not be guilty under this section unless the "false charge" which he is alleged to have made is proved to have been willfully false. Fact that the accused fails to prove the charge made by him does not necessarily show that it was false or was wilfully and maliciously made. *AIR 1914 Cal 349.*

(3) The false charge must be made, not to any person, but to a person who is empowered to investigate the charge and get the offender punished. *AIR 1964 SC 1773.*

(4) Where a false charge was made to a village Magistrate who had no power to investigate it and he passed on the charge (as he was bound to do) to a person who had the power to investigate it, it was held that this section applied. *(1909) 9 CriLJ 170 (FB) (Mad).*

(5) Where a charge was made to the police at M who had no power to investigate it but was repeated to the police at S who had such power it was held that this section was not inapplicable. *AIR 1936 Pat 358.*

(6) It is not necessary that the false charge must be one which would give rise to a criminal proceeding. Where X applied to the Court to take contempt proceedings against Y for beach of an injunction order of the Court and made false charges against Y in the petition, it was held that, assuming that the proceedings for contempt are not "criminal proceedings" within the meaning of the section, the section would still apply. *AIR 1964 SC 1773.*

(7) It is not necessary that the false charge must be of an offence under the Penal Code. A false charge against person of having committed an offence under a special or local law is also within this section. *AIR 1964 SC 1773.*

(8) A mere report of facts or information given is not a 'charge' though such report or information expresses a suspicion against a person. *AIR 1950 Nag 20.*

(9) Identification of accused at test parades does not amount to a "false charge" within this section, as such identification is not substantive evidence and it can only be used as corroborative of the statement in Court. *AIR 1973 SC 2190.*

(10) If a person specifically complains against another that he has committed a crime and does so falsely, he would be guilty of making a false charge. *AIR 1942 Oudh 100.*

(11) Answers given to question by the police under Ss. 161 and 162 of the Criminal Procedure Code cannot constitute "false charges" within the meaning of this section. *AIR 1932 Mad 24.*

(12) A false statement made to the police praying for the protection of the petitioner from harassment and oppression is not a false charge within this section. *AIR 1937 Lah 624.*

(13) In order to constitute a charge, it is necessary that the object and intention of the maker of the charge must be to set the criminal law in motion against the person charged. *AIR 1973 SC 2190.*

(14) Where a false charge is made to the police the fact that the statement was not reduced to writing under S. 154, Criminal P. C., does not prevent the statement from being a false charge within the meaning of this section. *AIR 1936 Mad 160.*

(15) Where a charge is partly true and partly false the proper test is whether the charge is substantially true or false, i.e., whether the main charge is false and what is true is a mere fringe of the complaint. *AIR 1963 Ker 152.*

9. "Against that person".—(1) The intention to cause injury must be with reference to a particular person. A person making a report to the police about the theft of his property without naming or indicating any particular person cannot be proceeded against under this section even if the report is false. *AIR 1941 Cal 288.*

(2) Where A filed a report before the police that his son was kidnapped by someone, not specified, it was held that this section did not apply. *AIR 1953 Assam 204.*

(3) A telegram that a dacoity had taken place without mentioning names is not an institution of false charge within S. 211. *AIR 1915 Mad 312.*

10. "With having committed an offence".—(1) To tell the police during an investigation that a person is a bad character is not making a charge of an offence. *1888 Pun Re No. 26 P. 47 (DB).*

(2) The refusal to give a stamped receipt for money paid was not an "offence and making a false charge against a person that he refused to give a stamped receipt was not a false charge of any "offence" and this section does not apply. *(1862-63) 1 Bom HCR 92.*

11. Knowledge.—(1) It is essential that, in order that the section may apply, the accused should have acted with guilty knowledge or in other words "knowing that there is no just or lawful ground" for such proceeding or charge. In the absence of such knowledge, the act will not amount to an offence under this section. *AIR 1925 Lah 325.*

(2) It is for the prosecution to prove that the accused knew that there was no just or lawful cause for the charge. *AIR 1952 Lah 325.*

(3) Unless it could be proved that the accused actually knew that there was no just or lawful ground for the charge, he is not guilty under this section and that it is not enough to show that he acted in bad faith or without due care and caution or acted maliciously or that he had no sufficient reason to believe or did not believe the charge to be true, though all these may be relevant evidence more or less cogent to prove such knowledge. *AIR 1939 Pat 178.*

(4) If the complaint is in its generality; bona fide, the fact that one accused person had been wrongly identified cannot be regarded as a ground for instituting a prosecution under this section. *AIR 1939 Pat 178.*

(5) If the allegations in the charge are substantially true and there is no mention of any particular section, a conviction under this section could not be sustained. *(1937) 20 Nag LJ 92.*

(6) Guilty knowledge is most difficult to prove. But that it should be proved substantially by the prosecution is absolutely essential. *(1867) 8 SuthWR (CR) 87.*

12. "Just or lawful ground."—(1) It is an essential element of the offence under this section that the false charge should have been made without just or lawful ground. *(1882) 15 MysLR No. 303.*

(2) To say that a complaint was not proved and had no basis on the evidence produced is not the same thing as saying that the complaint was false or that it was made with knowledge that there was no just or lawful cause or with intent to cause injury. *AIR 1955 MadhBha 42.*

(3) The person who was alleged to have given the information must be produced and it must be shown what the information given. Another way is to show that no person of ordinary prudence would, on the facts stated in the report, make such a charge. *AIR 1953 Raj 115.*

13. False charge against two or more persons.—(1) Where a false charge is made against two or more persons, only one offence is committed and not two in spite of the fact that the charge was made against two or more persons. *AIR 1934 Rang 21.*

14. Institution of criminal proceeding or false charge must have been made in Bangladesh.—(1) The institution of criminal proceedings or the false charge must have been made in Bangladesh where the Code is in force and not in a foreign territory. Where criminal proceedings were instituted and false charge made before a Court it was held that S. 211 did not apply. *AIR 1924 Bom 51.*

15. This section and Section 47 of the District Police Act, 1859.—(1) The word charge as used in this section has a different meaning form the meaning of the same word as used in the District Police Act. *AIR 1953 Mad 507.*

16. This section and Section 195.—(1) X burnt his own house and falsely charged Y with having committed an offence under S. 436 of the Code. It was held that the firing of the house was a minor act on the part of X, subordinate to the major act of making a false charge, as the burning of the house was manifestly intended to be used as evidence of the said false charge and that X should be convicted under this section and not under S. 195 of the Code. *(1867) 8 SuthWR (CR) 65,*

17. This S. and Section 182.—(1) It is an essential ingredient of the offence under S. 182 that the accused should have given information which he knew or believed to be false. It is not sufficient that he had reason to believe the information to be false. This section, on the other hand, requires that the false charge should have been made, knowing that there was no just or lawful ground for the charge. It is not necessary that he should have known that the charge was false. *AIR 1925 Sind 184.*

(2) The essence of the offence under S. 182 is not so much the falsity of the information as the contempt of the lawful authority of public servants. The essence of the offence of making a false charge under this section is the falsity of the charge. *AIR 1925 Mad 400.*

(3) The provisions of the Criminal Procedure Code, Section 195, requiring the complaint of the Court as a condition precedent for an offence (committed in or in relation to the proceedings before such Court) being taken coginzance of cannot be evaded by treating the offence as some other offence in regard to which the above provisions may not apply. *AIR 1966 SC 1775.*

(4) Where the accused first lodges a first information with the police and follows it up with a complaint containing the same information before a Magistrate, the information cannot be prosecuted for an offence under S. 182 unless the complaint to the Magistrate is found to be false and the Magistrate files a complaint in writing about an offence under this section. *AIR 1969 SC 355.*

(5) Where the accused made a false report to the police and a similar complaint subsequently to the Magistrate, the police can institute proceedings under S. 182 with reference to the false report, and where either section is applicable at the instance of either officer, Magistrate or police officer, the discretion or power of one or the other to proceed is not limited in any way whatever by the discretion vested in the other. *AIR 1928 All 342.*

(6) Where a charge might have been made against the accused under S. 182 or S. 211, and the charge was launched under the provision which requires sanction of a particular authority but which has been refused, it would be contrary to public policy to hold that it is open to the complainant to alter his election, shift his ground and start a fresh charge on the alternative section which does not require such sanction. *AIR 1922 All 502.*

(7) Where the matter falls under S. 182, it is the public servant concerned that must move in the matter and if he does not do so, the Court has no authority suo motu to do so. *AIR 1925 Mad 400.*

(8) Sanction of the Magistrate is required for a complaint under S. 182 or S. 211 but not for one under S. 182, P.C. and if police officer files a complaint under S. 182 it can be sustained. *AIR 1956 Hyd 25.*

(9) Woman demanding investigation and punishment of Sub-Inspector who is alleged to have raped her—Sub-Inspector not found guilty of charge—Complaint by Sub-Inspector against woman for false charge—Held, woman was guilty of offence under S. 211 and not under S. 182 and consequently complaint of District Superintendent of Police before whom false charge was made was not necessary. *AIR 1935 Nag 69.*

18. Complaint by Court—S. 195(1)(b), Criminal P.C.—(1) Where an offence under this section is alleged to have been committed in or in relation to any proceedings in Court X:--

(a) Court X cannot itself try the accused for that offence. *AIR 1926 Pat 368 (368).*

(b) No other Court can try the accused for that offence except on a complaint made by Court X. *AIR 1979 SC 777.*

(2) Offence under S. 211 in relation to proceeding in Court—Cognizance on private complaint is barred under S. 195(1)(b), Criminal P. C. *1984 CriLJ (NOC) 34 (Mad).*

(3) Where an offence cannot be said to be committed in or in relation to any proceedings in Court no complaint by a Court is necessary for the prosecution of the accused under this section. *AIR 1967 SC 528.*

(4) Where a false charge is laid before the police which does not lead to proceedings in Court no complaint under S. 195(1)(b) is necessary or can be given for the prosecution of the accused under this section. *AIR 1941 Mad 579.*

(5) Where the accused makes a false charge to the police and also makes a complaint to the Court which is found to be false, then a complaint by the Court would be a pre-requisite for a prosecution under this section. *AIR 1960 Raj 168.*

(6) Doing declaration—Accusation contained in —Made to a Magistrate—Does not amount to complaint. *AIR 1930 Pat 550.*

(7) Application by complainant asking for judicial enquiry of the charge made by him which the police had reported to be false is a complaint. *AIR 1919 Pat 530.*

(8) A successor-in-office of a Magistrate can give a complaint under S. 195(1)(b), Criminal P. C. in respect of an offence under this section committed in or in relation to proceedings before his predecessor-in-office. *AIR 1968 SC 1422.*

(9) Where the accused before a Bench of Magistrate, was discharged by two Magistrates, but the complaint under S. 195(1)(b) of the Criminal Procedure Code in respect of an offence under this section was made by three Magistrate it was held that the defect, if any, was only a technical defect and the High Court would not interfere with the conviction in revision. *AIR 1933 Oudh 430.*

(10) In a case where the complaint by the court under S. 195 (1). (b) of the Criminal P. C. is necessary, the Court should examine the person who made the false charge, give him an opportunity of being heard, and then prefer the complaint under S. 195 (1) (b), Criminal P. C. *AIR 1935 All 745.*

(11) The proceedings contemplated by Section 196 (1) (b), Criminal P. C. need not be in existence on the date of the commission of offence under S. 211, Penal Code. The fact that the proceedings had concluded would be immaterial. *1974 CriLJ 945.*

(12) Mere dismissal of complaint does not justify a Court in prosecuting the complainant under S. 211. *AIR 1927 All 107.*

(13) Where there are split opinions of two different tribunals it may be taken as a normally safe guide to suggest that definite expression as to the malice of either party are probably somewhat undesirable for a purpose to institute proceedings for malicious prosecution. *AIR 1922 Pat 160.*

(14) Court which acquitted the petitioner on the entire proceedings filed by the respondent, not mentioning or observing anything or granting permission to the petitioner to institute proceedings against the respondent under Section 211, P.C. complaint by petitioner under S. 211 is not maintainable. *1981 MadLW (Cri) 51.*

(15) Complaint's statement nor recovered—Held, the order of acquittal did not call for any interference and the order initiating compensation recovery proceedings under Sec. 211, P.C. was liable to be set aside. *1984 Raj CriC 45.*

(16) Where one Court finds charge made by the accused to be true and another Court finds it to be false it is not a case for exercising the discretion in favour of making a complaint for an offence under this section. *AIR 1922 Pat 160.*

(17) A complaint given by a Court for an offence under S. 193 of the Code cannot be availed to support a prosecution for an offence under this section. *AIR 1919 Pat 416.*

(18) An objection as to the want of complaint should not be reserved for consideration till the entire evidence is recorded but must be disposed of as a preliminary point. *AIR 1954 Mad 561.*

(19) Where a criminal case is compromised before the full evidence of the complaint is given it is not proper to direct a prosecution under this section. *AIR 1924 Pat 138.*

(20) T made a complaint to the police against P for certain offences. A warrant of arrest having been issued against P, he surrendered before the Magistrate who released him on bail. The police after investigation submitted the report indicating the complaint against P as baseless and false; thereupon the Magistrate discharged P. Held, that the release of P on bail and his subsequent discharge were proceedings before a court and had resulted directly from the complaint filed by T with the police and that for filing a complaint against T for making false charge under S. 211, a complaint by the concerned Magistrate in accordance with S. 195 (1) (b) would be necessary. *AIR 1979 SC 777.*

(21) A complaint in writing of the Court before which the offence is committed, or of some other Court to which such Court is subordinate is required for prosecution under section 195, CrPC. The Court must make a complaint and cannot directly order prosecution. A Court should not make a complaint where there are not sufficient materials before it to show that there is a prima facie case

against the accused. The mere fact that the complaint was dismissed by a Magistrate summarily under section 203, CrPC will not throw the burden on the complainant to prove that the complaint was a reasonable and honest one and justify a complaint by the Court *(27 CrLJ 1345).*

19. Complaint under this section against public servant.—(1) Cognizance of complaint under this section cannot be taken against a person for action taken by him as a public servant without the sanction of local Government. *AIR 1936 Rang 242.*

20. Abetment of offence under the section.—(1) Where A instigated B to make a false charge against C, of committing an offence but he was convicted of main offence under this section but the sentence awarded was sustainable under S. 211/109 of the Code, it was held that in the absence of any prejudice the conviction need not be altered to one for abetment. *(1903)7 CalWN 556.*

(2) An act done subsequent to the commission of the offence such as giving evidence in support of the false charge is not an abetment of the offence under this section and cannot be punished as such. *(1872) 18 SuthWR 28.*

21. Compounding of original offence.—(1) A made a false charge to the police that he had been wrongfully confined by B (S. 347). The police reported the charge as false and A was prosecuted for an offence under S. 211. While so being prosecuted A reported to the Court that he had compounded the original offffence with B, Held that the compounding was not a conclusive answer to the charge under S. 211. *(1885) 11 ILR Cal 79.*

22. Court making complaint under section 195 of the Criminal P.C. if can order compensation under S. 250, Criminal P. C.—(1) A Magistrate can make a complaint under S. 195, Criminal P. C. in respect of an offence under this section, and also grant compensation under S. 250, Criminal P.C. to the person falsely charged but before taking action under S. 250, Criminal P. C. the Magistrate must come to a finding of his own that the case is false and further that it is frivolous or vexatious. *(1913) 14 CriLJ 75.*

(2) If the false charge is of such a nature that a prosecution is necessary on grounds of public policy it may well be that a Magistrate would exercise discretion wrongly if instead of sanctioning a prosecution under S. 211, Penal Code he awarded compensation. If the false charge is one which does not render it necessary, on grounds of public policy that a prosecution should be sanctioned a Magistrate who makes an order for compensation cannot be said to exercise his discretion wrongly. *(1904) ILR 27 Mad 59.*

(3) Ordinary compensation under S. 250 without directing prosecution under S. 211 was held having regard to the facts as being a wrong exercise of discretion. *(1902) ILR 29 Cal 479.*

23. Complaint under this section—Trial for offence under Section 500.—(1) This section will apply only—where the false charge is made to a person who has power to investigate the charge. Where a false charge against a person is made to other person it may fall under S. 499 of the Code, if it amounts to defamation as defined by that section. *AIR 1964 SC 1773.*

(2) Where though a complaint purports to be one for an offence under this section, if the facts stated in the complaint disclose only an offence under S. 500 of the Code., the Magistrate will be at liberty to proceed against the accused for an offence under S. 500. *AIR 1925 Lah 631.*

(3) The dismissal of a complaint for an offence under this section is no bar to the filing of a complaint under S. 500 of the Code on the same facts. *AIR 1934 Rang 40.*

24. Opportunity to accused of being heard before prosecution.—(1) Where A makes complaint against B of having committed an offence under this section it should be disposed of

according to law like any other complaint. B is not entitled to be first given an opportunity of proving the truth of the charge he had made. *AIR 1942 Oudh 100.*

(2) Where A files a complaint against B before a Magistrate of having committed an offence under the Code, the complainant must be heard, giving A an opportunity of adducing evidence in support of his case, and disposed of, before the Court can order the prosecution of A for an offence under this section. *AIR 1939 Sind 78.*

(3) Although the complaint made by a person must be inquired into and disposed of before the complainant is prosecuted under S. 211, there is no provision of law requiring the Court to order the person to show cause why he should not be so prosecuted. *AIR 1919 Cal 433.*

25. Burden of proof.—(1) The burden of proof, in a trial for an offence under this section, is on the prosecution to prove that the act of the accused satisfied all the essential elements of the offence under this section. *AIR 1929 Mad 496.*

(2) The prisoner being put on his trial as for a criminal offence it is for the prosecution to make out a distinct case against him, not for the prisoner in the first instance to justify himself, and show that he had just or lawful ground for his charge. *(1939) 20 Nag LJ 92.*

26. Jurisdiction.—(1) Where a Magistrate not empowered to take cognizance of an offence, takes cognizance of it, the complainant cannot be prosecuted for an offence under this section for giving a false complaint, even though the Magistrate took cognizance of the complaint in good faith. *AIR 1930 Pat 550.*

(2) Where a false charge was made by the accused to the I.G. of Police at Madras by letter posted at Kumbakonam it was held that the offence of making a false charge must be taken to be completed at Madras, where the letter was received, and that the Kumbakonam Magistrate's Court had no jurisdiction to try the accused for an offence under Section 211 or for an attempt to commit that offence. *AIR 1948 Mad 292.*

27. Delay in filing complaint under this section.—(1)Great delay in filing the complaint under Section 211 should not be tolerated and such delay is a sufficiently good reason for refusing to proceed with the complaint. It is not in the public interest that persons should be allowed to come forward after such delay and to require the Court to enquire into the matter. *AIR 1935 Rang 485.*

28. Procedure.—(1) Where a false charge is made against several persons, distinct offences are committed against each of them and the accused may be separately proceeded against in respect of each of such offences. *AIR 1918 Low Bur 7.*

(2) Where two persons A and B make similar false charges separately on different dates against the same persons in respect of the same act , A and B ought not to be tried together but should be charged separately. *AIR 1920 Cal 927.*

(3) A person cannot be tried separately for offences under Section 182 and Section 211 where the charge in respect of either section is in respect of the same offence of giving false information or lodging a false charge or complaint. *AIR 1916 Upp Bur 18.*

(4) The offence under this section being non-cognizable one a prosecution for the offence cannot be started by the police of their own accord. *AIR 1925 Mad 672.*

(5) Not cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate if the offence made with intent to injure. If the offence is punishable with imprisonment for seven years or upwards and if the offence charged be capital or imprisonment for life—Metropolitan Magistrate or Magistrate of the first class.

29. Charge.—(1) It is desirable to mention in the charge the place of the commission of the offence but the non-mention of it will not render the proceedings invalid in the absence of prejudice caused to the accused. *AIR 1936 Pat 358.*

(2) The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—with intent to cause injury to one—instituted criminal proceedings before—charging the said—with having committed an offence of—(or falsely charged said—before—with having committed an offence to wit) knowing at the time that there was no just or lawful ground for such proceeding or charge against the said—and that you thereby committed an offence punishable under section 211 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

30. Punishment.—(1) Person convicted under the second part of the section cannot be sentenced merely to a fine, but must be given imprisonment with or without fine. *(1862-63)1BHCR 34.*

(2) If a false charge does not amount to an institution of a criminal proceeding the accused can be punished only under the first part of the section with imprisonment which may extend to 2 years or with fine or with both. *(1883) ILR 5 All 598.*

(3) In order that a case may fall under the second paragraph of this section, if the accused is charged with the knowledge that there was no just or lawful ground for doing so. It is further necessary that the criminal prosecution must have been for an offence punishable with the punishment mentioned in that paragraph and for the purpose, that the real nature of the complaint should be looked at. *(1885) 8 MysLR No. 329, P. 558.*

(4) The age of the accused is a consideration in awarding the punishment of fine. Where imprisonment is not awarded on the ground of the old age of the accused, the accused must be fined in such a way that he would suffer as much as if he had been a young man. *AIR 1917 Mad 667.*

31. Practice.—Evidence—Prove: (1) That the accused instituted or caused to be instituted criminal proceedings. Or That he made a charge of an offence.

(2) That there were just or lawful grounds for such proceedings; Or That such charge was false.

(3) That the accused then knew such criminal proceedings or charge to be without just or lawful grounds.

(4) That he did as above with intent to cause injury to the person in question.

Section 212

212. Harbouring offender.—Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

If a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

If punishable with [4][imprisonment] for life or with imprisonment.—and, if the offence is punishable with [4][imprisonment] for life or with imprisonment which

may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

[9]["Offence" in this section includes any act committed at any place out of [8][Bangladesh], which, if committed in [8][Bangladesh], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in [8][Bangladesh].]

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration

A, knowing that B has committed decoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to [4][imprisonment] for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

Cases and Materials

1. Scope.—(1) No prosecution case be launched under this section for screening or harbouring an accused, where there is no evidence to bring home the knowledge of the accused that the person harboured was an offender within the meaning of this section.

(2) An offence under this section presupposes that some other offence has been committed by a person whom the accused harbours or conceals with the intention of screening him from legal punishment. *AIR 1930 All 33.*

(3) Harbouring or concealing the offender is a necessary ingredient of the offence under this section. *1867 Pun Re Cr No. 21, P. 40.*

(4) The word 'harbour' includes supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or assisting a person in any way to evade apprehension. Mere knowledge of the whereabouts of an offender does not amount to 'harbouring' him unless the alleged 'harbourer' is guilty of any of the above acts. *AIR 1935 Cal 550.*

(5) A person can be supposed to "know" where there is a direct appeal to his senses. Under Section 26 a person can be said to have "reason to believe" a thing only when he has sufficient cause to believe such thing and not otherwise. *AIR 1930 All 33.*

(6) Where there is neither affirmative nor circumstantial evidence to bring home to the accused the fact that he "knew or had reason to believe" that the person whom he was "harbouring" was an "offender", his conviction under S. 212 cannot be sustained. *AIR 1930 All 33.*

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9. Ins. by the Indian Criminal Law Amendment Act, 1894 (Act III of 1894), s. 7.

(7) Where certain persons belonging to a criminal tribe were found hiding themselves in accused's premise soon after the occurrence of a dacoity in the neighbourhood and the accused, on being questioned by the chaukidar and other villagers who came there and arrested suspects, as to how they came to be there, kept silent and later, gave out the false, story that it was he who had arrested them, it was held that the evidence was not sufficient to convict the accused of an offence under this section, of having harboured the persons knowing or having reason to believe that they were the offenders concerned in the dacoity in question. *AIR 1938 Pat 358.*

(8) The section only applies to the harbouring of an offender i. e., one who has actually committed an offence. The section has no application to the harbouring of persons who are not offenders but who abscond merely for the purpose of avoiding or delaying the judicial inquiry into an offence. *AIR 1946 Pat 74.*

(9) For an offence under this section, it is necessary to prove that the accused knew or had reason to believe that an offence had been committed by the person harboured. Merely to know that he was a proclaimed offender is not enough. *AIR 1946 Pat 74.*

(10) A person cannot he considered as harbouring a thief unless his intention was to screen him from legal punishment and where the accused's act is only motivated by feelings of humanity (as when he gives food and surgical aid to a wounded person) and he has no intention of screening the offender form legal punishment he cannot be considered as "harbouring" him within the meaning of Section 110. *(1916) 11 CriLJ 490 (Upp Bur).*

(11) No prosecution can be launched under this section until the offender has been convicted of the offence he is alleged to have committed. *AIR 1951 Trav-Co 90.*

(12) A trial for the offence under this section should be stayed till the trial of the offender alleged to have been harboured by the accused has been concluded. *1937 Mad WN 21.*

(13) The punishment for the harbourer is made to conform to the gravity of the offence committed by the principal offender. The more serious the offence, the greater is the disfavour shown by law to the offender being harboured or screened from legal punishment. *AIR 1958 All 214.*

(14) Offence under Section 212 being bailable remand of accused to police custody is illegal and the accused is entitled to bail under Section 167(3) of Criminal P.C. *1982 Chand Cri C 443.*

2. Practice.—*Evidence*—Prove: (1) That an offence has been committed by the person harboured.

(2) That such offence is punishable with (a) death, or (b) imprisonment for life or imprisonment not exceeding ten years, or (c) imprisonment form one to ten years.

(3) That the accused has harboured or concealed the offender.

(4) That the accused knew him to be an offender, or had reason to believe him to be so.

(5) That the accused thereby intended to screen such offender from legal punishment.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class. If the offence is punishable with imprisonment for one year and not for ten years—Metropolitan Magistrate or Magistrate of the first class or Court by which the offence is triable.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day—of—the offence of (specify it) was committed at (specify the place) by XY, and that you on or about the—day—of—at—harboured or concealed the said XY

knowing (or having reason to believe) at the time of the said harbouring or concealing that the said XY had committed the said offence—and that you thereby committed an offence punishable under section 212 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 213

213. Taking gift, etc., to screen an offender from punishment.—Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment;

If a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with [4][imprisonment] for life, or with imprisonment.—and, if the offence is punishable with [4][imprisonment] for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Cases and Materials

1. Scope.—(1) This section is applicable when the person accepting illegal gratification is not a public servant *(AIR 1947 Cal 29)*. The compounding of a crime for stifling criminal prosecution is punishable under this section. This section will apply when persons really guilty are screened *(26 CrLJ 346)*. It is the duty of every State to punish the criminal. No individual has right to compound any crime because he himself is injured and no one else. This section does not apply where the compounding of an offence is legal.

(2) Unlike S. 161 applicability of this section is not confined to public servants. *AIR 1947 Cal 29.*

(3) This section may be compared with S. 217 in this respect. Like S. 161, S. 217 also applies only to public servants and the offence under S. 217 can be committed only by a public servant as such. *AIR 1947 Cal 29.*

(4) Before a person can be convicted under this section it is essential that the concealed offence (or the offence to which the screening etc., relates) should first be proved to have been committed. A mere suspicion of the offence having been committed would not suffice. *(1886) ILR 23 Cal 420.*

(5) The words 'concealing' or 'screening' presuppose the actual commission of the offence. *(1913) 14 CriLJ 453.*

(6) The expression 'screening any person from legal punishment' has the same meaning as the expression 'saving any person from legal punishment' used in Ss. 217 and 218, Penal Code. *AIR 1949 Bom 405.*

(7) Actual concealment of the offence of screening of the offender as well as acceptance of gratification or restitution as consideration is necessary to complete this offence. *AIR 1925 Cal 85.*

(8) Where the accused is the most material witness for the prosecution and the chances of conviction in the legal proceedings from which he desires to screen a person are remote if he makes himself scarce, the abstention on the part of the accused from giving evidence or his keeping away from the Court would amount to screening the offender. *AIR 1949 Bom 405.*

(9) Where a person is arrested for a certain offence and then, he is set at liberty by a public servant (having authority in regard to the matter) on receipt of a certain sum as a bribe the public servant is guilty of an offence under this section. *AIR 1947 Cal 29.*

(10) The word 'consideration' is wide enough to cover the case of something having been done or achieved in the past and also the case of something to be done in the future. *AIR 1949 Bom 405.*

(11) Offences under special laws like the Forest Act may be compoundable by virtue of the provisions of such Acts. *(1912) 13 CriLJ 574 (Low Bur).*

(12) Where the accused was convicted under this section for screening a cattle-lifter from punishment and was sentenced to six months' rigorous imprisonment, the Sessions Judge reduced the sentence in appeal to one month and a few days i.e., for period already undergone. It was held that under the circumstances of the case, the appellate sentence was not inadequate. *(1905) 2 CriLJ 232.*

(13) Where a public servant is prosecuted under this section for having accepted an illegal gratification for doing any of the things mentioned therein, (e.g. not proceeding against an arrested person), his act is not done in his official capacity and hence no sanction is necessary for his prosecution under S. 197 of the Criminal P.C. *AIR 1947 Cal 29.*

Practice.—*Evidence*—Prove: (1) That the commission of the offence is concealed.

(2) That the accused (a) concealed such offence, or (b) screened the offender from legal punishment, or (c) omitted to proceed against such offender so as to bring him to punishment.

(3) That the accused accepted, or attempted to obtain, or agreed to accept the gratification or restitution, as described in the section.

(4) That the accused so accepted, etc. in consideration of such concealment, etc. as in (2).

3. Procedure—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class, and if with imprisonment for less than ten years, triable by Metropolitan Magistrate, Magistrate of the first class or Court by which the offence is triable.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—one XY, committed the offence punishable with—and that you on or about the—day of—at—accepted or attempted to obtain or agreed to accept a certain gratification to wit—(or certain property, to wit—) for yourself (or for) in consideration of your concealing the said offence of—(or screening the said XY from legal punishment for the said offence, or not proceeding against the said XY for purpose of bringing him to legal punishment) and that you thereby committed an offence punishable under section 213 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 214

214. Offering gift or restoration of property in consideration of screening offender.—Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or [to restore or cause][Sic] the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment;

If a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with [4][imprisonment] for life, or with imprisonment.—and, if the offence is punishable with [4][imprisonment] for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

[10][*Exception.*—The provisions of sections 213 and 224 do not extend to any case in which the offence may lawfully be compounded.]

Illustrations.—*Rep. by the Code of Criminal Procedure, 1882 (X of 1882).*

Cases and Materials

1. Scope.—(1) Section 213 dealt with the receiver of gift or presentation and this section punishes the offer of the gifts. The motive in giving gratification is very material and that is to compromise an offence which is not compoundable. The offence is complete when as soon as the gratification so offered. Compounding of offences other than falling under section 345, CrPC is illegal. A Court dealing with, a charge under this section is not entitled to question the correctness of the decision of another Court acquitting a person charged with having committed the offence which the person before it is charged with having attempted to conceal *(47 CrLJ 817).*

(2) The words 'concealing an offence' and screening 'any person from legal punishment for any offence' appear to presuppose the actual commission of an offence, or the guilt of the person screened from punishment. *AIR 1918 Nag 181.*

(3) The accused was separately tried and convicted for an offence under Defence Rules for exporting goods without permit and also under this section for offering a gift to conceal the above offence. His conviction for the offence under the Defence Rules was set aside and he was acquitted of that offence. It was held that thereafter his conviction for the offence under this section could not stand and when he applied for revision against such conviction, the Court of Revision was bound to set aside the conviction. *AIR 1946 Pat 101.*

Sic. The use of the words in square brackets "to restore or cause" is both syntactically as well as semantically incorrect. *Read* "restores or causes" instead thereof.—*Chief Editor*

10. Subs. by the Indian Penal Code Amdt. Act, 1882 (VIII of 1882), s. 6 for the original *Exception.*

(4) Accused acquitted of offence under S. 165A of Penal Code and Prevention of Corrupt Act—No proof of misappropriating Government money—Held, accused not liable to conviction under S. 214 also. *AIR 1981 SC 1735.*

(5) The intention of the Legislature under this section is to discourage malpractices when offences have really been committed and not to ensure general veracity on the part of the public in regard to imaginary offences or offenders. *(1913) 14 CriLJ 453(454) (DB) (Bom).*

(6) The actual concealment or screening even though for a short time, is essential for conviction under this section. *AIR 1925 Cal 85.*

(7) Where two of the accused offered gratification to a public servant in consideration of his not proceeding against them and the other accused whose papers and books he had seized, made such offer in consideration of his not bringing them to legal punishment, it was held that they committed offence under this section and not under Section 109/161 of the Code . *1881 Pun Re No. 13, P. 15.*

(8) Where consideration is given or offered under this section for concealment of an offence, the fact that no particular person has been found to have committed the offence and the gratification is not in consideration of screening form punishment any particular person will not affect the question of the guilt of the person who has paid or offered the gratification. *(1809) 4 Mys CCR No. 189, P. 649.*

2. Practice.—*Evidence*—Prove: (1) That the commission of the offence concealed.

(2) That the accused (a) concealed such offence; or (b) screened the offender from legal punishment; or (c) omitted to proceed against such offender so as to bring him to punishment.

(3) That the accused gave or caused, or offered to give or cause the gratification, etc. as stated in the section.

(4) That he so gave or caused, etc. in consideration of such concealment, etc.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class, if with imprisonment for less than ten years, Metropolitan Magistrate or Magistrate of the first class, or Court by which the offence is triable.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That on or about the—day of—at—you gave or caused or offered to give a gratification, to wit—to XY, in consideration of the said XY's concealing the offence of—under section—of —and which offence is punishable with (or of his screening you or any person to wit—from legal punishment) for the said offence of—(or of his not proceeding against you or any person to wit—for the purpose of brining you or him to legal punishment) and thereby committed an offence under section 214 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 215

215. Taking gift to help to recover stolen property, etc.—Whoever takes, or agrees or consents to take, any gratification under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his

power to cause the offender to be apprehened and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Cases and Materials : Synopsis

1. Scope.—(1) This section is primarily aimed at professional trackers and other person who being usually in league with thieves or well aware of their proceedings obtain money, etc. for the recovery of stolen property without making any effort to bring the offenders to justice. This section is not intended to apply to the actual thief but to someone who being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property and at the same time using all means in his power to cause the thief to be apprehended and convicted of the offence *(15 CrLJ 471, 26 CrLJ 1121).* This section is not intended to punish a person who receives consideration bonafide for helping the owner who lost his property by theft from recovering the same. There can be no conviction under this section unless there is evidence that the loss of the moveable property was through an offence committed under the Code *(33 CrLJ 709).*

(2) Expression "unless he uses all the means in his power to cause the offender to be apprehended" explained—Burden of proof on the accused. The expression "unless he uses all means in his power to cause the offender to be apprehended " in section 215, indicates the intention of the legislature that the accused will have to show that he used all means in his power to apprehend the offender. The burden of proof in these circumstances of a case falling under section 215 of the Code is on the accused because it is within his knowledge as to what he did or did not do for apprehending the offender. *Eusuf Haji Vs. State (1965) 17 DLR 117.*

(3) Complainant's bullock missing—Circumstances showing that it might have strayed—Section not applicable. *AIR 1940 Pat 548.*

(4) It is not an offence to take money from another in order to help him to find stolen property and to convict the thief. In order that the act should come within the scope of S. 215, there should be evidence: (i) that property has been stolen; (ii) that the accused knew the criminal and (iii) that he has failed to use all means in his power to cause the offender to be apprehended. *AIR 1935 Sind 105.*

(5) It is not an offence under this section to take money from another in order to help him to find stolen property and to have the thief convicted. *AIR 1935 Sind 105.*

(6) The cycle of X was stolen by some one Y approached X and told him that if he (X) gave him a certain amount his cycle could be recovered. X paid Y a smaller sum which Y accepted but did nothing to recover the bicycle. The manner of Y's approach implied that he was to be asked no questions as to the actual offender and no attempt was intended to be made for the apprehension or conviction of the thief. It was held that the accused Y was guilty of an offence under this section. *AIR 1938 Pat 590.*

(7) Where it is doubtful whether the important ingredients of the offence are present the accused should be given the benefit of doubt and acquitted. *AIR 1935 Sind 105.*

2. "Takes or agrees or consents to take any gratification".—(1) Where accused offers to trace and recover for the complainant a certain movable property which he has lost, if he (the accused) is paid a certain amount and on the complainant refusing to pay the amount demanded, the accused does nothing further in the matter, the accused is not guilty of any offence under this section. *AIR 1940 Pat 548.*

3. Knowledge of the criminal whether necessary.—(1) The accused need not have knowledge of the offender who deprived the owner by means of an offence, of movable property .*AIR 1938 All 440.*

4. "Deprived by any offence".—(1) It is one of the essential ingredients of the offence under this section that an owner ought to have been deprived of his movable property by an offence punishable under the Code. A conviction under this section cannot be sustained in the absence of evidence to show that the loss of the movable property was by means of the commission of an offence punishable under the Code. *AIR 1940 Pat 548.*

(2) Where cattle belonging to X stray away, X cannot be said to be 'deprived' of his possession of such cattle and there is no presumption that an offence has been committed with respect of such cattle. *AIR 1941 Pat 138.*

(3) The word 'deprive' must not be construed, narrowly in the sense of "taken out of the possession of". It would include not only a taking out of the procession of the owner, but also preventing him form getting possession of it if he would have done so in the normal course of events. Thus where A's bullock strays away and is tied up by somebody, A can be said to be 'deprived' of the bullock. *AIR 1938 All 440.*

(4) Where the accused took the complainant who had lost his buffaloes to the jungle but without pointing out to him the actual place where buffaloes were, himself went alone and returned with the buffaloes, it was held that it would not be inferred that some person had committed criminal misappropriation in respect of them. *AIR 1953 Madh Bha 191.*

5. "Uses all means in his power".—(1) To a large extent the conduct of the accused after he has received the gratification determines his guilt or innocence. If, the person agreeing to take the gratification or having taken the gratification has used all means in his power to bring about the apprehension and conviction of the accused, then he does not commit the crime defined in this section. *AIR 1925 Cal 85.*

(2) Where it was found that the prisoner knew the thieves and assisted in endeavoring to purchase the stolen property form the thieves, not intending to bring them to justice, it was held that the receipt of money amounted to corrupt receiving of money. *(1849) 18 LJ MC 186.*

(3) Where an accused knowing that a buffalo was stolen property demands gratification from owner to help him recover the animal without making attempts to get the person who had stolen or the person who has retaining it to be prosecuted and convicted, he is guilty under S. 215. *1977 All CriR 63.*

6. Onus proof that the accused used all means within his power.—(1) It is not for the prosecution to prove the negative that the accused did not use all means in his power to cause the offender to be apprehended. It is for the defence to establish the positive fact that they did all in their power to cause the offender to be apprehended. *AIR 1947 All 225.*

7. Whether the thief himself can be convicted under this section.—(1) The person who has committed the main offence can also be convicted under this section. *AIR 1947 All 225.*

(2) A person suspected of theft may, if the prosecution fails to prove the fact of theft by him be convicted under this section. *AIR 1938 Pat 570.*

(3) An actual thief or person suspected to be the thief can be convicted under this section. *1967 CriLJ 1248 (Raj).*

8. Attempt.—(1) A proposal to the owner of the lost property to recover it on receipt of a certain amount on condition that the thieves should not be prosecuted will amount to an attempt to commit the offence under this section. *AIR 1941 Rang 295.*

9. Procedure.—(1) Where the accused who was sentenced to six months' R.-I. and fine under S. 215, but by the time case came to High Court the offence was eight years old and accused had already suffered 1 month's jail he was let off with imprisonment suffered but fine was maintained. *1977 All CriR 63.*

(2) It is only in exceptional circumstances that a more severe sentence should be passed for both offences than would have been inflicted for the thefts alone. *AIR 1941 Rang 340.*

(3) Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

10. Practice.—*Evidence*—Prove: (1) That the owner of the movable property was deprived of it by an offence punishable by the Code.

(2) That the taking of such gratification under the pretence of helping recovery of the property lost.

(3) That the accused took or agreed to take or consented to take some gratification.

(4) That the accused failed to use all means in his power to cause the apprehension and conviction of the offender.

11. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That X the owner of—movable property was deprived of it by offence namely—punishable by the Code that on or about—at—took or agreed or consented to take some gratification, that you did so under the pretence or on account of helping to recover the property deprived of, that you failed to use all means in your power to cause the offender apprehended and convicted and that you have thereby committed an offence punishable under section 215 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 216

216. Harbouring offender who has escaped from custody or whose apprehension has been ordered.—Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

If a capital offence.—if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with [4][imprisonment] for life, or with imprisonment.—if the offence is punishable with [4][imprisonment] for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and, if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

[11]["Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of [8][Bangladesh] which, if he had been guilty of it in [8][Bangladesh], would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in [8][Bangladesh], and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in [8][Bangladesh].

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

Cases and Materials

1. Scope.—(1) The purpose of section 216 is to penalise acts designed to obstruct or defeat the course of justice, which requires that suspected persons should be arrested whether they may prove eventually to be guilty or innocent and it is not necessary to show in a prosecution under section 216 that the offence in respect of which orders for their apprehension were issued was actually committed. For a conviction under section 216 it must be shown: first, that there has been an order for the apprehension of a certain person as being guilty of an offence; secondly, that knowledge by the accused party of the order; thirdly, that the harbouring or concealing by the accused of a person with the intention of preventing him from being apprehended *(AIR 1944 PC 54)*. This section requires that a definite order must have been made for his arrest by a public servant in the exercise of his lawful power as such public servant.

(2) It is not an essential ingredient of the offence under this section that the person harboured should be found guilty. It is enough to show that the person harboured had escaped from lawful custody or that an order had been issued for his apprehension for an offence. *AIR 1928 Mad 1147.*

(3) The fact that the person harboured is subsequently acquitted will not affect the guilt of the person who has harboured him. *AIR 1928 Mad 447.*

(4) In order to convict a person under this section, it must be shown that the warrant to arrest alleged offender was a legal one. *AIR 1928 Bom 184.*

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11. Ins. by the Indian Criminal Law Amendement Act, 1886 (Act X of 1886), s. 23.

(5) It is necessary that an order for apprehension should have been made a proclamation under Section 82 of the Code of Criminal Procedure reciting that a warrant has been issued is neither legal evidence that a warrant has been issued nor is equivalent to notice of its contents to the public. *AIR 1944 PC 54.*

(6) The mere fact that an absconder is found in the house of another is not sufficient to involve the owner of the house of an offence under this section. It is the duty of the prosecution to prove that the accused knew that the person harboured is a proclaimed offender. *AIR 1939 Lah 19.*

(7) The issue of proclamation under Section 82, Criminal P. C. cannot establish that the accused knew of the issue of the warrants. The distinction between "knowing" and "having reason to believe" cannot be ignored. To read this section as if it contained the latter words would vitiate the judgment, conviction and sentence. *AIR 1944 PC 54.*

(8) False information given by the accused after having been informed that the person harboured was a proclaimed offender is sufficient to bring the accused within the purview of this section. *AIR 1980 Lah 99.*

(9) The words "in any way" meant to point to some method ejusdem generics with those specified in the earlier portion of the section, it was held that they did not include the assisting of an accused person to escape by merely telling lies to the police as to his whereabouts. *AIR 1924 All 676.*

(10) Helping the offender to escape or evade apprehension, by giving false information to the police would be a form of "harbouring" and will be an offence under this section. *AIR 1930 Lah 99.*

(11) Where with the intention of assisting an offender wanted by the police, a person warns him of the approach of the police and thereby helps him to escape arrest by the police, the person who so warns the offender would be guilty under this section. *AIR 1925 Oudh 423.*

(12) Where the accused has helped another to evade apprehension he is guilty of the offence of harbouring under this section. There is no time-limit for the duration of the offence, and it is immaterial how long the evasion continues, the offence being complete as soon as the accused has committed the act which amounts to the "harbouring." *AIR 1923 Lah 223.*

(13) Where there is no legal proof that the accused did any of the things that would amount to "harbouring", he must be acquitted. *AIR 1935 Rang 294.*

(14) Mere knowledge of the whereabouts of an offender does not amount to harbouring him unless the accused has done something to help the offender to evade apprehension. *AIR 1935 Cal 550.*

(15) The mere production by the father of his son, who was absconding on demand by the police is not sufficient to prove that the father was "harbouring" the son. *AIR 1935 Cal 550.*

(16) Employing any method which gives time and opportunity to the offender to conceal himself or escape would be assistance to the offender in evading apprehension. *AIR 1918 Cal 826.*

(17) If a man from mere motive of humanity and without any intention of enabling the fugitive to escape from justice, were to give food to a man who was starving, or surgical assistance to one, who was wounded, even with a full knowledge of his character, he cannot be said to commit an offence under this section. *AIR 1928 Bom 184.*

(18) No provision whatever is made under this section for the punishment of a harbourer where the man harboured is wanted for an offence punishable with imprisonment of less than one year. *AIR 1943 Oudh 51.*

(19) Offence under S. 216 being bailable remand of accused to police custody is illegal. *1982 Chand CriC 443.*

2. Practice.—*Evidence*—Prove: (1) That the person in question has been convicted of, or charged with, an offence.

(2) That such person was in lawful custody for the same.

(3) That such person escaped from such custody.

(4) That the accused knew of such escape.

(5) That he with knowledge harboured, or concealed such offender.

(6) That he did so, with intent to prevent him from being apprehended.

(7) That the offence in question was punishable with (a) death , or (b) imprisonment for life or imprisonment for ten years, or (c) with imprisonment for one to ten years.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That on or about the—day of—at—one XY was charged with or convicted of an offence under section—by the Court of—(or one XY was ordered to be apprehended for an offence punishable under section—by—a public servant in the execise of his lawful powers as such public servant) and that you knowing of the escape of XY or knowing of the said—order for apprehension on the—or about—day of—at—harboured or concealed XY with the intention of preventing him from being apprehended, and that you thereby committed an offence punishable under section 216 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 216A

[12]**[216A. Penalty for harbouring robbers or dacotis.**—Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without [8][Bangladesh].

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

12. Sections 216A and 216B were inserted by the Indian Criminal Law Amendment Act, 1894 (Act III of 1894), s. 8.

Cases and Materials

1. Scope.—(1) This section should be read along with sections 26, 52A, 390 and 391 of the Penal Code. Section 212 is a general provision. But in case of robbery and dacoity this section must be applied. To justify a conviction under this section both knowledge and intention are required. This section requires that no one should harbour any person who know that a robbery or dacoity is about to be committed or has been recently committed.

(2) In order that the section may apply it must be shown—

(a) that the persons in question were about to commit or had recently committed robbery or dacoity;

(b) that the accused knew or had "reason to believe" this;

(c) that the accused harboured all or any of such persons;

(d) that the accused did so with the intention of—(i) facilitating the commission of such robbery or dacoity, or (ii) of screening them or any of them form punishment. *1958 MPLJ (Notes) 94.*

(3) In order to attract the applicability of the section, it is not enough that a person should be harbouring dacoits in general, but that the section renders it penal to harbour persons who intended to commit a particular dacoity. *AIR 1925 Sind 295.*

(4) Merely telling an untruth respecting the whereabouts of the dacoits after the dacoity is committed, is no offence under this section unless there is proof that such statement was made with the intention of screening the dacoits from punishment. *1947 RangLR 38.*

(5) Section 110 (c) of the Criminal P.C. provides for the taking of security for good behaviour from persons who habitually protect or harbour thieves in general. This section provides for the punishment of persons for harbouring particular persons; who are about to commit or have recently committed robbery or dacoity. *AIR 1923 682(684)*

(6) Where a person charged with the substantive offence of dacoity or robbery has been acquitted of that offence, another person who is said to have intended to screen him from legal punishment in respect of that offence, cannot be held guilty of harbouring the alleged offender under this section. *AIR 1947 Mad 303.*

(7) A person is not a dacoit in respect of whom the Court is satisfied that his connection with the gang is limited to certain acts, which in themselves do not amount to dacoity or abettor thereof, the acts may be punishable under this section. *(1910) 11 CriLJ 551 (Oudh).*

(8) The burden of proof is on the prosecution to prove all the ingredients of the offence. *1958 MPLJ (Notes) 94.*

2. Practice.—Evidence—Prove: (1) That the persons in question were about to commit or had recently committed robbery or dacoity.

(2) That the accused knew this.

(3) That the accused harboured them or some of them.

(4) That the accused did so with the intention of (a) facilitating the commission of such robbery or dacoity, or (b) screening them or some of them from punishment.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—knowing or having reason to believe that some persons, namely X, Y, Z, were about to commit (or had recently committed) robbery or dacoity harboured him or them (mention the robber. dacoity, etc.) with the intention of facilitating such robbery or dacoity or (of screening him or them) from punishment and that you thereby committed an offence punishable under section 216A of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 216B

216B. Definition of "harbour" in sections 212, 216 and 216A.—*Omitted by the Penal Code (Amendment) Act, 1942 (VIII of 1942), s. 3.]*

Section 217

217. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) Sections 217 to 220 deal with disobedience by public servants in the cause of discharge of their official duties. Section 217 deals with official partiality involving disobedience of lawful directions. Section 217 makes dereliction of duty committed in the exercise of powers by public servant punishable. This section makes punishable a certain dereliction of duty quite a part from the question as to whether any bribe is paid to induce such dereliction. The directions must be express, positive, specific and not general directions in connection with an act *(AIR 1947 Cal 29).* It will be sufficient if the accused had knowledge that by this act an offender could be saved from legal punishment *(33 CrLJ 657).* The words "save" in this section and "screen" in section 213 have the same meaning *(51 CrLJ 84).*

(2) For a conviction under this section it is not necessary as in the case of charge under S. 201, to establish that an offence has actually been committed. *AIR 1932 Cal 850.*

(3) The section makes punishable a certain dereliction of duty quite apart from the question whether or not a bribe is paid to induce such dereliction. The dereliction must have been committed in the course of the discharge of the functions of the person charged. *AIR 1947 Cal 29.*

(4) Failure on the part of the Sub-Inspector of Police to seize an unlicensed muzzle loading country made gun in the course of the house search of the suspect with an intention to help the latter to escape

punishment for a consideration of illegal gratification was held to amount to an offence under Penal Code, S. 217. *AIR 1932 Cal 850.*

(5) The expression "save any person from legal punishment" under this section has the same meaning as "screening any person from legal punishment." *AIR 1949 Bom 405.*

(6) Where a police constable retains for himself a piece of gold found in a search for stolen property but not proved to be part of the stolen property, without reporting his possession to his superior officers under S. 457, Cr. P. C. he is guilty of the offence under this section. *AIR 1916 Mad 1109.*

(7) An offence under this section clearly falls under S. 197 of the Criminal P.C. and hence, sanction under that section is necessary for the prosecution of the public servant under this section. The sanction has to be obtained before proceedings are started. Sanction given or obtained after the institution of the proceedings is not sufficient to validate the proceedings. *AIR 1947 Cal 29.*

2. Practice—Evidence—Prove: (1) That the accused is a public servant.

(2) That he conducted himself in the particular manner charged.

(3) That such conduct was in the exercise of his duties as such public servant.

(4) That such conduct was in disobedience to a direction of law.

(5) That when the accused disobeyed such direction of law, he did so knowingly.

(6) That when he was guilty of such disobedience he intended to, or knew that it was likely that he would thereby save (a) some person from punishment or subject some person to a less punishment than that to which he was entitled, or (b) some property from forfeiture or a charge to which it was liable, or (c) that such punishment. etc., was legally enforceable or that such forfeiture or charge was legal liability.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by the Special Judge under Act XL of 1958.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate/Judge) hereby charge you (name of the accused) as follows:

That on or about the—day of—at—you being a public servant knowingly disobeyed the direction of the law as to the way in which you were to conduct yourself as such public servant, to wit (specify the direction of law) intending thereby to save—(or knowing it to be likely that you would thereby save—) from legal punishment (or subject him to a less punishment than that to which he was liable or with intent to save or knowing that you were likely thereby to save some property to wit—from forfeiture and that you thereby committed an offence punishable under section 217 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Sanction.—Sanction for prosecution of a public servant is necessary under section 6(5) of Act XL of 1958.

Section 218

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record

or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cases and Materials

1. *Scope and applicability.*
2. *This section and S. 192.*
3. *This section and Ss. 167, 193 and 197.*
4. *"Charged."*
5. *"Record".*
6. *"Frames that record or writing."*
7. *"In a manner which he knows to be incorrect."*
8. *"With intent to cause."*
9. *Actual user of the record not necessary.*
10. *Alteration of the record in exercise of powers vested in public servant.*
11. *"To save any person from legal punishment".*
12. *Charge.*
13. *Necessity for sanction to prosecute or for complaint.*
14. *Jurisdiction.*
15. *Sentence.*
16. *Procedure.*
17. *Practice.*

1. Scope.—(1) This section deals with the intentional preparation of a false record with the object of saving or injuring any person or property. The correctness of records is of the highest importance to the State and to the public. The intention with which the public servant does the acts mentioned in the section is an essential ingredient of the offence punishable under it. Though the offence under this section appears to overlap the offence under section 193 to some extent, it is still distinct *(AIR 1942 All 150).* Legal punishment is not departmental punishment. Substitution of one page for another is within this section *(1970 CrLJ 726).* Actual guilt of the offence is not necessary. It is sufficient that the commission of a cognizable offence is brought to the notice of the officer who to screen the offender has prepared the incorrect record *(26 CrLJ 837).*

(2) Charge under section 218 exclusively triable by Sessions Court framed by Magistrate under sections 218 and 420, P.C., and conviction only under section 420, P.C. Held, Trial was without jurisdiction. As soon as the Magistrate had framed a charge under section 218 he lost jurisdiction over the trial. *Asiruddin Vs. Crown (1953) 5 DLR (FC) 101.*

(3) Evasion of arrest is not obstruction to arrest. By running away, the appellant evaded arrest, but mere evasion of arrest does not amount to offering resistance or obstruction to the arrest which would result only if there were some active opposition to the arrest by force or show of force. *(1951) PLD (Lah) 276.*

(4) Petitioner, an MBBS was a demonstrator in Dhaka Medical College. He held a post mortem examination on the dead body of one Nurjahan Begum. In the first report he opined that the death was caused by drowning and suicidal in nature. Subsequently, he prepared another post mortem report starting that death was caused by Strangulation and was homicidal in nature. He pleaded that he was an experienced doctor. He contended that he carried out the order of the superior officer who asked him to prepare the second post mortem finding the first one to be incorrect. He was sentenced to one year's

rigorous imprisonment. Held: Explanation that he carried out the order of the superior officer who found the first report incorrect is unacceptable in that when the second report was going directly opposed to the first report the petitioner should have taken due care to get the order of the superior officer in writing stating the circumstances in which a fresh report was being called for, stating the reasons justifying a radical departure from what was stated in the first report. He was endangering the neck of someone under section 302, Penal Code. In discharging his professional duties, a doctor must strictly observe the rules of medical ethics and jurisprudence as well as have regard to the laws of the country which do not spare the kind of conduct for which he now stands convicted. *5 BCR 61 AD*

(5) This section contemplates a wilful falsification of a public document with intent thereby to cause loss or injury to the public or any person by means of the document itself or by some transaction with which it is essentially connected. *Rat Un Cri C 201.*

(6) Even if the incorrect document is not submitted to another person or otherwise used by the writer, the offence is complete as soon as the document is made part of the record. The requirements of the section are satisfied, if it is shown that the document has been prepared by a public servant, charged with its preparation in a manner which he knows to be incorrect and with the knowledge that he is thereby likely to cause loss to the public or any person. *(1971) 2 SC CriR 318.*

2. This section and S. 192.—(1) Transaction may partake some of the characteristic offences u/ss. 192 and 218, the dominant factor would be the principal motive. If the motive was to make a false document with the object that an erroneous opinion be formed in some judicial proceedings, the provisions of S. 192 would be attracted. The proximity to a judicial proceeding pending or likely to come into existence is the test by which applicability of S. 192 has to be determined. *1970 All CriR 263.*

3. This section and Sections 167, 193 and 197.—(1) Court cannot refuse to take cognizance of offence under S. 218 merely because it also falls under S. 193 and the public servant presumably intended to allow the record to be made use of as evidence in a judicial proceeding. *AIR 1962 All 150.*

(2) The offences may at times overlap but that does not make them any the less distinct and the accused can be prosecuted for the offence under this section although in the particular case the offence may also fall under Section 193, and there is no complaint under Section 195, Criminal P.C. for prosecution for the offence under S. 193. *AIR 1968 SC 19.*

(3) While S. 192 deals with judicial proceedings and the false evidence is intended to be used in a judicial proceedings, this section deals with public servants and the gist of the offence is the intentional preparation of a false record with a view to saving or injuring any person or property . This need not have relation to a judicial proceeding as such. *AIR 1968 SC 19.*

4. "Charged".—(1) The word "charged" is not restricted to the narrow meaning of "enjoined by a special provision of law". *AIR 1930 Lah 159.*

(2) Where a public servant who is not charged with the preparation of any record submits a false record, he cannot be convicted for an offence under this section. *AIR 1929 All 374.*

(3) The Pradhan of a village who was only liable for correct maintaince of birth and death registers and who was not required to prepare them or make entries therein, could not be charged under S. 218. *1982 AllCriR 264. (265)..*

5. "Record."—(1) A pay sheet drawn by a Railway Officer is a record with this section. *AIR 1914 Oudh 361.*

6. "Frames that record or writing".—(1) A conviction of a police official under this section can be maintained only where it is established that during the investigation the accused recorded statements which were not made before him, or altered the statements that were actually made, or made a record of circumstances which as a matter of fact did not transpire before him. *AIR 1970 Punj 200.*

(2) The fact that the police officer recorded statements made before him which were false and which he knew to be false is not sufficient to make him guilty of an offence under this section, where his recording was not incorrect in any way, although he might have had a motive for recording the false statement knowing it to be false. *AIR 1925 Lah 461.*

(3) The substitution of one leaf by another so as to omit a particular party from the page substituted may be penal within the second ingredient of the section. *AIR 1970 Punj 200.*

7. "In a manner which he knows to be incorrect."—(1) Under this section, unless the record is incorrectly prepared with the knowledge that it is incorrect, the accused will not be guilty. *(1871) 15 SuthWRCr 17.*

(2) A bonafide mistake in the preparation of a public record by a public servant will not be an offence under this section. *1964 AllCrR 244.*

8. "With intent to cause."—(1) An offence under this section is committed if it is proved that the accused made the entries in question with the intention to cause or knowing it to be likely that he would thereby cause loss or injury, it is immaterial whether the accused would have been able to accomplish the object he had in view. *AIR 1938 Mad 595.*

(2) Where direct evidence proving the necessary criminal intention is lacking in the case and the circumstantial evidence too meager to support any safe conclusion as to the intention with which the accused made the entry, it is not safe to convict the accused for an offence under this section. *AIR 1957 SC 486.*

(3) Where a Sub-Inspector of Police made a report thereby to the Magistrate knowing it to be incorrect thereby causing injury to the complainant it was held that he was liable under this section. *AIR 1930 Lah 159(163): 31 CriLJ 584.*

(4) Patwari making wrong entry ignoring transfer of crop by Civil Court Amin to particular person and thereby including former tenants to commit riot—Inference of criminal intent to cause loss can be drawn. *AIR 1935 All 968.*

9. Actual user of the record not necessary.—(1) It is not necessary that the record incorrectly framed should be actually submitted to any person or used by the writer. If the record is framed incorrectly with the intention of causing loss or with the knowledge that he is likely to cause loss or injury to the public or any person the offence is complete. *AIR 1938 Mad 595.*

10. Alteration of record in exercise of powers vested in public servant.—(1) Where the public servant (Lokhpal of the village) corrected entries in Revenue record by entering the name of certain persons as tenants on the basis of his discovery that they were in possession, it was held that the entries, though erroneous were made in the exercise of his powers given him by the Land Revenue Manual and that the public servant could not be prosecuted under this section for correcting such entries. *1970 CriLJ 384 (All).*

11. "To save any person from legal punishment."—(1) The public servant who makes the record or writing is included in the expression "save any person form legal punishment." Hence, a public servant, who makes a false entry to save himself from legal punishment commits the offence under this section. *AIR 1921 Bom 115.*

(2) The word "save' in this section and the word "screen' in Section 213 have the same meaning. *AIR 1949 Bom 405.*

(3) Where a perusal of entry made in the general dairy by A.S.I. showed that it was incorrectly prepared by him and wrong facts were mentioned therein, in order to suppress the crimes committed by the police at the time of occurrence, the A.S.I. was liable to be convicted u/s. 218. *1981 AllLJ 871.*

(4) Where the prosecution has failed to prove the main offence of murder against the accused a public servant, he would be entitled to benefit of doubt in respect of the offence under Sec. 218 for framing record. *1982 CriLJ (NOC) 69 (Ker).*

12. Charge.—(1) Where an accused is charged for falsification of several documents and all the documents form part of one transaction for the same purpose a single charge in respect of all the documents is not illegal and even if there is any irregularity, the same is cured by Ss. 220 and 465, Cr. P.C. *AIR 1918 Lah 242.*

(2) The charge should run as follows:

I, (name and office of the Special Judge) hereby charge you (name of the accused) as follows:

That, on or about the—day of—at—being a public servant charged with the preparation of a record or writing to wit—framed the said record or writing in a manner which you knew to be incorrect (specify the incorrect statement) and which you made with intent to cause or knowing it to be likely that you will thereby cause loss or injury to the public (or to any person to wit—) or with intent thereby to save or knowing it to be likely that you will thereby save any person from legal punishment or with intent to save or knowing that you are thereby likely to save any property to wit—) from forfeiture to which it was liable by order of the Court in case No.— of—and that you thereby committed an offence punishable under section 218 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

13. Necessity for sanction to prosecute or for complaint.—(1) If the acts complained of are so integrally connected with the duties attaching to the officer as to be inseparable form them than sanction under S. 197, Criminal P.C. would be necessary for a prosecution under this section. But where the official status furnishes only the occasion or opportunity for the criminal acts complained of no sanction to prosecute would be necessary. *AIR 1968 All 207.*

(2) Where several persons are tried for more offences that one and sanction is required in respect of one of the offences committed by one of the accused but is not obtained, it would be necessary to consider in respect of that other offences charged against all the accused whether the trial of such offences has been prejudiced by the introduction of the evidence in regard to the offence for which sanction was required. If there was prejudice then whole trial can be set aside. If there was no prejudice the trial is not void. *AIR 1953 Bom 177.*

(3) The provisions of S. 340 Criminal P. C. are not applicable to an offence under this section, but the provisions of S. 344 of the Criminal P.C. will apply. *AIR 1966 All 510.*

(4) Joint trial of offences under Ss. 161 and 218, Penal Code—Previous sanction under S. 6, Prevention of Corruption Act, 1947, not obtained for former offence—Evidence of demand and acceptances of illegal gratification for making false entry relevant for both offences—Accused is not prejudiced by joint trial and conviction for latter offence is valid. *AIR 1951 All 502.*

(5) Sanction for prosecution of a public servant is required under Act XL of 1958.

14. Jurisdiction.—The Offence under this section was triable only by a Court of Sessions under the Criminal P.C. *AIR 1914 Oudh 361.*

15. Sentence.—(1) A Police Officer manipulating a record such as Police diary should be given deterrent punishment. *1964 (2) CriLJ 71.*

16. Procedure.—(1) The joint trial of a constable charged under S. 161 for accepting bribe and his colleague a constable charged under S. 218 for having made false entries in the general diary with intention to negative the offence under S. 161 is legal as the two offences though distinct were committed in the same transaction. *1982 AllLJ 681.*

(2) Not cognizable—Warrant—Not bailable—Not compoundable—Triable by the Special Judge under Act XL of 1958.

17. Practice.—Evidence—Prove: (1) That the accused is a public servant.

(2) That he was charged with the preparation of record or other writing in his capacity as a public servant.

(3) That he framed such record or other writing in an incorrect manner.

(4) That he then knew that he was framing it in incorrect manner.

(5) That he did as above with the intent or with the knowledge that it was likely that he would thereby (a) cause loss or injury to the public or any person, (b) save a person from punishment, or (c) save some property from forfeiture or charge.

(6) That such punishment was legally enforceable or that such charge or forfeiture was legal liability.

Section 219

219. Public servant in judicial proceeding corruptly making report, etc. contrary to law.—Whoever, being a public servant, corruptly or maliciously makes or pronounces, in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) This section may be read along with sections 21, 77 and 196. The essence of the offence under this section is that there must be a judicial proceeding, actually commenced and pending, wherein a party claims relief against another and invites the decision of the Court in regard thereto and not a fictitious one where there is no party litigating.

(2) The essence of the offence that there must be a judicial proceeding actually commenced and pending wherein a party claims relief against another and invites the decision of the Court in regard thereto. *1979 All CriR 233.*

(3) Where a village munsif framed the register of suits as showing that a certain suit was filed where, in fact, it was not so filed and made an entry of a judgment purporting to have been passed in the suit, whereas in fact, it was not so passed, it was that this section would not apply, though the accused may be punishable under S. 218 of the Code. *AIR 1938 Mad 595.*

(4) An order under S. 112, Cr. P. C. (1898) drawn up by a Magistrate. There is no judicial proceeding and any report submitted by the police up to the stage does not fall within the scope of judicial proceedings and S. 219 is not attracted even if the report is found to have been furnished corruptly or maliciously. *1979 All CriR 233.*

(5) The term 'maliciously' implies an intention to an act which is wrongful to the detriment of another. *AIR 1917 All 317.*

(6) Where a village munsif heard and pronounced a decree which he knew to be contrary to law, in a suit which he knew he had no jurisdiction to entertain, it was held that he had acted maliciously and was guilty of an offence under this section. *AIR 1917 All 317.*

2. Practice.—Evidence—Prove: (1) That the accused is a public servant.

(2) That he made or pronounced the report, order or decision.

(3) That he did as in (2) corruptly and maliciously.

(4) That such report, order and decision was made or pronounced in the course of a judicial proceeding.

(5) That such report , etc. was contrary to law.

(6) That when the accused made or pronounced the same he knew it to be contrary to law.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Sessions.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you on or about the—day—on the file of—at—a judicial proceeding now pending, you a public servant corruptly or maliciously made or pronounced report, order or decision which you knew to be contrary to law, that you have thereby committed an offence punishable under section 219, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.—Sanction is required under section 197, CrPC.

Section 220

220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) In view of the abolition of Chapter XVIII, commitment proceeding, now the legal position is that the Session triable cases are being sent to the Court of Session under section 205, CrPC. This section should also have been amended by replacing the word "commit" by "send".

(2) The liability under this section is one under the general law and is not affected by the imposition of liability under Statutes. *AIR 1943 Pat 229.*

(3) Where a person is kept under wrongful containment by the police on certain false charges, for the purpose of extorting money from him by threat of prosecution, the offence falls under this section and not S. 342 or Section 347. *AIR 1947 Sind 36.*

(4) Malice or corruption and guilty knowledge are the essential ingredients of the section. *(1904) 1 CriLJ 146 (152) (Kathiawad); (1903) 5 BomLR 597(598) (DB).*

(5) Every unlawful commitment to confinement will not by itself warrant the legal inference of malice; malice must be alleged and proved. *AIR 1967 Mad 262.*

(6) Where the unlawful commitment to confinement was wilful without any excuse and with a view to put pressure on the person confined to come to terms with a person in whom the accused was interested, it was held that the accused could be said to have acted "maliciously". *AIR 1956 Pepsu 30.*

(7) Police Sub-Inspector wrongfully confines certain persons on charges of gambling in futures and extorts money from them by putting them in fear of being challenged upon offences which he knew to be false; the offence falls under S. 220 and not under S. 347 or S. 342 and is triable only by the Court of Session. *AIR 1941 Sind 36.*

(8) Knowledge that keeping in confinement is contrary to law is a question of fact and must be established in order to satisfy the requirements of this section. *AIR 1948 Sind 67.*

(9) The keeping of a person arrested on suspicion of his having committed an offence in confinement, even by a person who had legal authority to do so would be an offence under this section, if in the exercise of that authority, he knows that he is acting contrary to law. *AIR 1943 FC 18.*

(10) The prior sanction of the Government under S. 197 of the Code is necessary for a prosecution of the accused for an offence under this section where the officer is one referred to in that section. *AIR 1947 Sind 60.*

(11) Where the accused is charged with an offence under this section and also with offences under S. 193 and 211 of the Code, and the prosecution for the offences under Ss. 193 and 211 could not be continued for want of complaint under S. 195, Criminal P. C., there is no impediment to the prosecution being continued for the offence under this section, which does not require any such complaint. *AIR 1937 Lah 802.*

(12) An accused charged under S. 220 of the Code and his confederate charged under Section 348 read with S. 114 of the Code must be tried together where the offences form part of the same transaction. *AIR 1941 Sind 36.*

(13) The circumstances that the accused acted as per instruments of the superior officers and he had no personal grudge will be relevant on the question of sentence. *AIR 1948 Sind 67.*

(14) Complaint against police officer under sections 220 and 342, Penal Code, Offence under section 220 exclusively triable by court of Session—Additional District Magistrate after recording evidence of witnesses in preliminary inquiry taking cognizance of offence under section 342 only—ADM in circumstances of case not bound to commit accused to Court of Session and Justified in discharging accused if no case made out against him. *PLD 1967 Ker 649.*

(15) A police officer arresting a person unjustifiably or otherwise than on reasonable grounds and bona fide belief renders himself liable for prosecution under section 220 of the Penal Code. *Alhaj Md. Yusuf Ali Vs. The State 22 DLR BLD (HCD) 231.*

2. Practice.—Evidence—Prove: (1) That the accused held an office, which empowered him to (a) send persons for trial, or (b) commit persons to confinement, or (c) keep persons in confinement.

(2) That he sent a person for trial or to confinement or kept a person in confinement in exercise of such powers.

(3) That he, in doing as above, was acting contrary to law.

(4) That he at the time knew that he was acting contrary to law.

(5) That he when doing as in (2) also acted corruptly or maliciously.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session.

4. Charge.—The charge should run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows:

That you being in an office which gives you the power to order or keep in confinement persons, on or about—at—corruptly or maliciously committed a person to confinement in exercise of that authority knowing that in so doing you were acting contrary to law and have thereby committed an offence punishable under section 220, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction—No prosecution under this section can be instituted without sanction under section. 197, CrPC.

Section 221

221. Intentional omission to apprehend on the part of public servant bound to apprehend.—Whoever, being a public servant legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with [4][imprisonment] for life or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

Cases and Materials

1. Scope.—(1) This section may be read along with section 21, 40 and 43. This section deals with intentional omission and keeping in confinement any person charged with or liable to be apprehended for an offence, or intentionally allowing such person to escape or intentionally aiding such persons to escape from such confinement.

(2) The ingredients of the section are: (a) The accused must be a public servant who is legally bound to apprehended or keep in confinement any person either charged with or liable to be apprehend for any offence. (b) He must have intentionally omitted to apprehend or allowed such person to escape or must have aided such person in the escape or attempting to escape from the confinement. *AIR 1979 SC 1184.*

(3) The prosecution must prove that the accused was legally bound to arrest or detain a person and that he did either make the arrest or intentionally allowed the suspected person to escape. *AIR 1979 SC 1184.*

(4) Where the accused was under no legal obligation to arrest or detain person, his arrest of such person for any offence and the subsequent escape of the prisoner will not make the accused guilty under this section. *AIR 1929 All 935.*

(5) Where the accused were legally bound to arrest a man who had committed a murder in their presence and they intentionally omitted to apprehend him, their motive in so doing being to avoid themselves hurt, it was held that they were guilty under this section. *AIR 1936 All 651.*

2. Practice.—Evidence—Prove: (1) That the accused is a public servant.

(2) That the person in question had been charged with an offence or that such person was liable to be apprehended for an offence.

(3) That the accused was legally bound to apprehend such person for the same.

(4) That he omitted to apprehend.

(5) That he did so intentionally.

Prove also that the offence for which such person is charged with, etc., is punishable (a) with death; (b) with imprisonment for life or imprisonment upto ten years; (c) with imprisonment for less than ten years.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by a Metropolitan Magistrate or Magistrate of the first class; if it comes under the second clause, triable by Metropolitan Magistrate or Magistrate first or second Class; if it comes under third clause, triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you being a public servant namely—and being as such public servant legally bound to apprehend (or keep in confinement) one X (offender) who was on or about—at—charged with or liable to be apprehended for an offence under section—and punishable with—intentionally omitting to apprehend such person or intentionally allowed the said X, offender, to escape or intentionally aided the said X in escaping or attempting to escape from such confinement and that you thereby committed an offence punishable under section 221 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.–Previous sanction under section 197 CrPC, for prosecution is necessary.

Section 222

222. Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.—Whoever, being a public servant legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence [13][or lawfully committed to custody], intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is so say:—

with [5][imprisonment for life] or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to [5][imprisonment for life], [14][* * *] [15][* * * *] [16][* * * *] or imprisonment for a term of ten years or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, [13][or if the person was lawfully committed to custody].

Cases and Materials

1. Scope.—This section may be read along with sections 20, 21, 40 and 43. This section is similar to section 221 with the exception that the person to be apprehended has already been convicted or sent for trial of an offence. It is thus an aggravated form of offence punishable under section 221 of the Penal Code.

(2) In order to attract the provisions of Section 222, it must be established by the prosecution that the omission or failure on the part of the public servant was in respect of a person convicted and sentenced or otherwise lawfully committed to custody. *1975 ChandLR (Cri) 429 (Delhi).*

(3) Where an act does not amount to escape but constitutes a preparation to escape, and the accused intentionally facilitates the attempt to escape, he will be guilty under this section even though the attempt has been frustrated by other circumstances. *AIR 1929 Lah 631.*

2. Practice.—Evidence—Prove: (1) That the accused is a public servant.

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13. Ins. by the Indian Penal Code Amendment Act, 1870 (XXVII of 1870), s. 8.
14. The words "or penal servitude for life" were omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (II of 1950), Sch.
15. The words "or to transportation" were omitted by Ordiance No. XLI of 1985.
16. The words "or penal servitude" were omitted by Act II of 1950, Sch.

(2) That the person is question was sentenced by a Court of Justice.

(3) That such sentence was for an offence committed.

(4) That such person was liable to be apprehended under such sentence.

(5) That the accused was legally bound to apprehend such person.

(6) That he omitted to apprehend.

(7) That he did so intentionally.

3. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Chief Metropolitan Magistrate, District Magistrate, Additional District Magistrate. If the offence comes under second clause the case is triable by Metropolitan Magistrate or Magistrate of the first class. If the case comes under third clause, it is triable by Metropolitan Magistrate, Magistrate first or second class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, being a public servant, to wit—and being as such public servant legally bound to apprehend or keep in confinement one XY, who was, on or about the—day of— at—under the sentence of the Court of—for the offence of—(or who was lawfully committed to custody, by—) did intentionally omit to apprehend the said XY (or intentionally suffer the said XY to escape, or intentionally aid the said XY in escaping or attempting to escape from such confinement) and that you thereby committed an offence punishable under section 222 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.—Previous sanction under section 197 CrPC, for prosecution is necessary.

Section 223

223. Escape from confinement or custody negligently suffered by public servant.—Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence [13][or lawfully committed to custody], negligently suffers such persons to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Cases and Materials : Synopsis

1. *Scope and applicability.*
2. *Legally bound to keep person in confinement.*
3. *"Confinement."*
4. *"Charged with any offence."*
5. *"Escape from lawful custody."*
6. *Negligence.*
7. *Sentence.*
8. *Effect of acquittal under this section.*
9. *Procedure.*
10. *Practice.*
11. *Charge.*
12. *Sanction.*

1. Scope and applicability.—(1) This section deals with negligence of public servant who negligently suffered any person charged with or convicted of an offence or lawfully committed to custody and kept in confinement to escape from confinement.

(2) This section provides for the punishment of such public servant who negligently suffers the person in confinement to escape. *(1942) 46 CalWN 163.*

(3) In view of the difference between Sections 221 and 222 on the one hand and this section on the other, the maximum punishment prescribed for the offence under this section is comparatively much less severe than the one prescribed under S. 221 or S. 222. *(1911) 16 MysCCR No. 207*

(4) In order that the section may apply the accused must have been acting as a public servant at the relevant time. *1972 CriLJ 988 (Pat).*

2. Legally bound to keep person in confinement.—(1) The accused must be a public servant legally bound (inter alia) to keep in confinement any person charged with or convicted of any offence. *(1941) 46 CalWN 163.*

(2) Convict warders and overseers are public servants since under the Jail Rules they are empowered to keep persons in confinement and as such are covered by the definition of public servant in S. 21, Cl. (7). *(1909) 9 CriLJ 90.*

(3) The expression "public servant" in this section must be understood in the light of the Explanation and a person who is actually discharging the duties of a public servant must be held to be a "public servant" legally bound to keep a person in confinement if the real holder of the officer is legally bound to do so. *1888 Rat Un Cr C 388.*

3. "Confinement".—(1) The expression "confinement" in the section is not restored to confinement within certain circumscribing limits. *1891 Pun Re (Cr) No 2. P. 3.*

(2) Where constables escorting a prisoner for one place to another negligently allowed the prisoner to escape en route, it was held that the prisoner was in confinement at the time of escape and that the constables were guilty under this section. *1891 Pun Re (Cr) No. 2 P. 3.*

(3) Where an authority not authorised to confine but only to detain, let off a person from his custody no offence under this section is committed. *1972 CriLJ 988 (Pat).*

(4) Where the accused puts the prisoner in the thana under lock and key and puts a sentry, the accused cannot therefore be said to have the prisoner under his confinement and cannot be convicted of an offence under this section if the prisoner escapes in his absence. *1900 PunjLR No. P. 8.*

4. "Charged with any offence".—(1) It is not necessary that the accused should have been formally charged with the commission of any offence or that charges should have been framed against him. *(1911) 46 CalWN 163.*

(2) Where a Check Post officer under the Sales Tax Act detained certain persons but they were not charged or convicted of any offence and the officer allowed them to escape he is not guilty of any offence under this section. *1972 CriLJ 988.*

5. Escape from lawful custody.—(1) Where a person has been committed to custody and is also not charged with an offence or under a sentence for an offence, but has been simply arrested under a civil process, allowing him to escape is not an offence under this section. *(1886) ILR 12 Cal 190.*

(2) A prisoner cannot be said to have escaped from confinement until he has regained his liberty. *1890 Pun Re No. 32.*

(3) The escape from custody contemplated by this section is an escape from lawful custody. Where the custody is not a lawful one, a public servant who suffers the prisoner to escape from such unlawful custody does not commit any offence under this section. *AIR 1918 Pat 252.*

6. "Negligence".—(1) Before a man can be convicted under this section it must be shown, not only that he was guilty of negligence but that the escape was, at least, the natural and probable consequence of his negligence. It must be shown that the escape was directly due to the negligence. If the escape was only remotely connected with the negligence, there can be no conviction under this section. *AIR 1918 All 282.*

(2) Where a police daffadar with some constables is entrusted with the duty of escorting some prisoners and he stays away and allows the constables to proceed with the prisoners and the prisoners escape owing to the negligence of the constable, the daffadar is also guilty of the offence under this section along with constables. *(1911) 16 MysCCR No. 207 P. 1234.*

(3) Where the prisoners escape during the watch of the accused, it is prima facie evidence of his negligence and he must satisfactorily establish that he took all reasonable care in performance his duty. *AIR 1951 Kutch 89.*

(4) Accused A and B were sentries at the jail gate in which 'D' was confined as undertrial prisoner Accused 'C' came to the jail gate and told A and B that 'D' was called by the jailor for some work in his house. He had brought the key from the jailor to open the middle gate A and B and C opened their respective gates and D was given in charge of C. D escaped from C's custody. Held—A and B were negligent in giving D in charge of 'C' against the jail rules—Even if there were orders from the jailor, those were illegal and they were not bound to obey them they were guilty under S. 223. As regards 'C' he was actually acting as a public servant when D was given to his charge and, in allowing him to escape he was also negligent and hence guilty under S. 223. *1982 WLN (UC) 148.*

7. Sentence.—(1) Where the accused does not act with any corrupt motive but his conduct may be regarded as mere negligence a sentence of fine may be an adequate punishment. *(1884) ILR 6 All 129.*

(2) Where two undertrials escaped from the custody of the petitioners and were later arrested and convicted and there was not single instance of dereliction of duty on the part of petitioners in the past and they had to maintain their families they were released on probation. *1904 All Ind CriLR 158.*

8. Effect of acquittal under this section.—(1) An offence under special enactments. Hence an acquittal of the accused of the offence under this section does not bar his prosecution under S. 29 of the Police Act. *AIR 1933 Pat 670.*

9. Procedure.—(1) Where a prisoner was charged with commission of an offence in British India and he escaped from custody of the accused who were British police officers, it was held that Court had no jurisdiction to try the accused under this section on the ground that the accused committed no offence against the law. *(1894) 17 Mys LR No. 448, P. 701.*

(2) A prosecution of a public servant under this section requires sanction under Section 197, Criminal P. C. *1972 CriLJ 988.*

(3) Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

10. Practice.—Evidence—Prove: (1) That the accused is a public servant.

(2) That the person in question was charged with or convicted of an offence.

(3) That the accused was legally bound to keep such person in confinement.

(4) That he suffered such person escape therefrom.

(5) That he acted negligently when suffering such person to escape.

11. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—being a public servant to wit—and as such public servant legally bound to keep in confinement one XY who was charged with the offence of—under section—of the Penal Code (or convicted of or lawfully committed to custody) negligently suffered the said XY to escape from confinement, and that you thereby committed an offence punishable under section 223 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

12. Sanction—Sanction is necessary for prosecution of the public servant under section 197, CrPC.

Section 224

224. Resistance or obstruction by a person to his lawful apprehension.—Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Cases and Materials : Synopsis

1. *Scope.*
2. *"Resistance or illegal obstruction to the lawful apprehension."*
3. *"Escapes from any custody in which he is lawfully detained."*
4. *"Offence."*
5. *"With which he is charged."*
6. *"For any such offence".*
7. *"Intentionally."*
8. *Procedure.*
9. *Proof.*
10. *Sentence.*
11. *Explanation to the section.*
12. *Practice.*
13. *Charge.*

1. Scope.—(1) This section punishes the person who offers resistance or obstruction to their lawful apprehension. It requires that the accused person must offer resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he has been charged or of which he has been convicted *(25 CRiLJ 462).* A charge of having escaped from custody may be inquired in and tried wherever the person happens to be when the charge is made (section 181, CrPC).

(2) Arrest without any offence charged, illegal—In order to make a person liable for an offence under section 224 of the Penal Code the essential prerequisite is that the apprehension of the person must be lawful apprehension for offence with which he is charged or of which he has been convicted. In the instant case, neither the FIR nor charge-sheet discloses that the petitioner was wanted in connection with any case whatsoever. Criminal trial—Deprivation of a citizen's liberty must be in accordance with law. The police as guardians of law and order are now armed with extra-ordinary powers and if they behave in an irresponsible and unauthorised manner then the whole concept of personal liberty of the citizen will be jeopardised. *29 DLR 270.*

(3) Leave to appeal to Supreme Court—granted to examine plea that, while dismissing application for bail before arrest Session Judge had acted illegally in remanding the accused to custody and that in any event transfer by High Court of case under S. 224, Penal Code from the Court of Magistrate to Session was bad in law. Offence under section 224 read with Schedule II, triable by Magistrate first or second class. Sessions Judge has no jurisdiction to try such offence without formal order of commitment *(Ref PLD 1957 Kar 428). 1966 PLD 589 SC.*

(4) The section is limited to cases in which the apprehension or confinement is for an offence, while in regard to the previous three sections, (viz, Ss. 221, 222 and 223), it is only S. 221 which is limited to the apprehension or custody of an offender and Ss. 222 and 223 are wide enough to apply not only to a person charged with or convicted of an offence but also to other persons, provided they have been lawfully committed to custody. *(1886) ILR 12 Cal 190.*

2. "Resistance or illegal obstruction to the lawful apprehension."—(1) Resistance or illegal obstruction to the lawful apprehension or arrest of a person for an offence is itself an offence punishable under this section. *AIR 1932 Lah 615.*

(2) If the arrest or order for arrest is not legal, resistance to the arrest will not be an offence. *AIR 1968 All 132.*

(3) Resistance or obstruction to arrest can be said to be caused only if there is some active opposition to the arrest by force or show of force. *(1952) 52 CriLJ 1031 (Lah).*

(4) Mere evasion of arrest by running away amount to offering of the police party does not amount to offering resistance or obstruction to arrest within the meaning of this section. *AIR 1917 Mad 182.*

(5) Where a police officer was about to arrest an accused and a crowd carrying lathies began to assemble just to see what was going on, without any intention of preventing the police officer from making the arrest and the police officer considered their apprearance so formidable that he desisted from arresting the accused, it was held that it could not be said that the accused committed an offence under this section. *AIR 1925 All 308.*

(6) The question whether an apprehension is lawful does not depend upon the ultimate acquittal of the accused person. *AIR 1966 Mys 20.*

3. "Escape from any custody in which he is lawfully detained."—(1) The latter part of this section provides that whoever escapes or attempts to escape from any custody in which he is lawfully detained is punished under it. *AIR 1954 Hyd 89.*

(2) In construing the words "lawfully detained in custody" in this section regard must be had to the nature of the custody itself as well as to the circumstances under which the authority to arrest and keep in custody arises. *AIR 1916 Mad 686.*

(3) It is only after a person has been apprehended or arrested that the question of custody arises. *ILR (1953) Cut 751.*

(4) In order to sustain a conviction under this section, it is essential to show that the apprehension or arrest was lawful in every way. *AIR 1964 Ker 185 (DB).*

(5) If the person arresting the accused has no authority to do so, escape from custody after such arrest is not an offence. *AIR 1927 Cal 516.*

(6) Where a police constable arrested a person under a warrant which was not signed by the Magistrate ordering the arrest and the accused escaped from such custody, the arrest is not legal and the accused committed no offence. *AIR 1918 Pat 252.*

(7) If the warrant is initialed by the endorsing officer it is sufficient compliance with the law. *(1901) 5 CalWN 447.*

(8) If a person is arrested for non-cognizable offence by police officer without warrant, then his custody is not lawful and escape from such custody is not offence under this section. *AIR 1936 Pat 249.*

(9) A private person may, under S. 43 of the Code of Criminal Procedure, arrest any person who in his view commits a non-bailable and cognizable offence and if the person so arrested escapes while in such custody, he will be liable under this section. But if the offence is not committed in the view of the private person or is bailable, an arrest by such a person is not legal and escape from such custody is not an offence. *AIR 1924 Mad 384.*

(10) A person legally arrested for an offence must submit to be tried and dealt with according to law. If he gains his liberty before he is delivered by due course of law, he commits the offence of escape form custody even when the escape is effected by the consent or neglect of the person that kept the accused in custody. *AIR 1954 Hyd 89.*

(11) Even where a person in the lawful custody of the police is forcibly rescued by others, he must be held to escape form lawful custody, if he does not come back and submit to the custody voluntarily, the moment he is set free by his rescuers. *AIR 1969 Mad 408.*

4. "Offence."—(1) A person who escapes from lawful custody in which he has been detained for an offence punishable under a special or local law can also be punished under this section.*(1886) 9 MysLR No. 384 P. 819.*

(2) The arrest of a person for failure to furnish security for good behaviour under Section 122 of the Code of the Criminal Procedure or under S. 152 of the Land Revenue Act is not an arrest for an offence and hence escape from custody while under such arrest does not fall within this section. *AIR 1925 Sind 193.*

5. "With which he is charged."—(1) The word 'charged' is this section is used in the ordinary sense of the word, namely, that a person is accused of having been involved in an offence and not in the sense that a charge has been farmed against him by a Court of law under the Code of Criminal Procedure. *AIR 1927 Bom 96.*

(2) For a conviction under this section, it is necessary to establish that the accused was charged with an offence before he is arrested. *(1955) 8 Sau LR 290.*

6. "For any such offence".—(1) The words "for any such offence" in this section mean for any offence with which he is charged or of which he has been convicted .So that it would be an offence for a person to escape from custody after he has been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence. *AIR 1917 Cal 426.*

7. "Intentionally."—(1) To constitute an offence under this section, the resistance or obstruction to arrest must be intentional. *AIR 1966 Mys 20.*

(2) An obstruction or resistance is intentional when those who offer the obstruction or resistance do so with the intention that there should be no apprehension notwithstanding such apprehension is to their knowledge lawful. *AIR 1966 Mys 20.*

(3) Where the accused is forcibly taken away form custody by others, it has been held that he escaped from custody intentionally and, therefore cannot be convicted under this section. *AIR 1957 Mad 714.*

8. Procedure.—(1) A charge of theft and a charge for escaping form lawful custody cannot be tried together in one trial as they are not so connected as to form one transaction within the meaning of S. 218 of the Criminal P.C. *(1906) 4 CrilJ 389 (Low Bur).*

(2) Charges of rioting and hurt and escape from lawful custody can be tried together if they are part of the same transaction. *AIR 1924 Mad 384.*

(3) Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

9. Proof.—(1) The question whether a person was or was not charged with an offence should depend upon the facts and circumstance of each case and the inference to be drawn therefrom. *1963 (2) CriLJ 466 (Mys).*

10. Sentence.—(1) Where a police officer went to arrest a person for an offence and he resisted the arresting on the ground that he had obtained a bail order and the police officer was not satisfied with it and the accused then accompanied him to the police station, it was held that in the circumstances of the case a sentence of fine of Rs. 200/- was sufficient. *(1959) 26 Cut LT 92(95).*

(2) A person accused of an offence under this section can plead no circumstances in extenuation, as the offence under this section and Section 225 are serious ones. *AIR 1965 Mys 20.*

11. Explanation to the section.—(1) Punishment for an offence under this section must be in addition to the punishment awarded for the substantive offence. But there is nothing in the Explanation to this section to require that a sentence of imprisonment must be made to run consequently to a sentence imposed for the main offence of which the accused has been convicted. *AIR 1934 Bom 462.*

12. Practice.—Evidence—When the offence charged is that of resistance to apprehension, prove:
(1) That the accused is charged with an offence.

(2) That he offered resistance or obstruction to his apprehension.

(3) That such resistance or obstruction was illegal.

(4) That the accused offered it intentionally.

13. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of at—intentionally offered resistance (or illegal obstruction) to your lawful apprehension for the offence of—with which you were charged or of which you had been convicted or escaped or attempted to escape from the custody of —in which you were lawfully detained for the offence of —and thereby committed an offence punishable under section 224 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 225

225. Resistance or obstruction to lawful apprehension of another person.—Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with [5][imprisonment for life] or imprisonment for a term which may extend to ten years, shall be punished with imprisonment, of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice or by virtue of a commutation of such a sentence to [5][imprisonment for life], [15][* * *], [17][* * *], or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with [5][imprisonment for life] or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Cases and Materials : Synopsis

1. *Scope.*
2. *Apprehension for an offence.*
3. *Resistance or obstruction.*
4. *Rescue.*
5. *Intention.*
6. *Knowledge of facts leading to detention.*
7. *Arrest of custody must be lawful—General.*
8. *Defective warrants—Apprehension whether lawful.*
9. *Detention in custody must be lawful.*
10. *Arrest and custody by policeman.*
11. *Arrest by private person.*
12. *Procedure.*
13. *Sentence.*
14. *Practice.*
15. *Charge.*

1. Scope.—(1) This section deals with resistance offered by persons other than the offender to the lawful apprehension or escape from custody. Intentional offering of any resistance or illegal obstruction to the lawful apprehension of an offender obstructing and beating a police-officer while apprehending a person on a charge of cognizable offence without warrant are punishable under section 225 or 332.

2. Apprehension for an offence.—(1) In making an arrest, the body of the person to be arrested should be actually touched, or confined unless there is a submission to the custody by word or action on the part of person to be arrested. Mere words do not constitute an arrest. *AIR 1916 Sind 19.*

(2) Proceedings under Chap. VIII of the Code of Criminal Procedure (security proceedings) are not proceedings in respect of 'offence' within the meaning of Section 40. *(1885) ILR 7 All 67.*

17.* The words "penal servitude" were omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (II of 1950), Sch.

(3) The apprehension must be lawful; whether it is made in good faith or not, is immaterial. *AIR 1966 Mys 20.*

3. Resistance or obstruction.—(1) Threatening an officer in order to prevent him from making an arrest of a person may amount to offering resistance or illegal obstruction to the apprehension of such person. *AIR 1930 Pat 344.*

(2) In the absence of any intention to prevent the apprehension of a person, the mere assembly of a large number of persons even with lathis, did not amount to resistance or obstruction to apprehension of that person. *AIR 1925 All 308.*

4. Rescue.—(1) A person cannot rescue himself from custody though he may be said to escape form custody, nor can a person be said to have been rescued when the officer himself releases the person in custody. *AIR 1940 Pat 479.*

(2) To constitute a rescue there must be an overt act on the part of the accused. Mere oral incitement or instigation to escape will not be sufficient to make out the offence of rescuing a person from custody. *AIR 1961 Ker 331.*

5. Intention.—(1) The resistance or illegal obstruction must be intentional. In the absence of proof of such intention the accused is entitled to be acquitted. *AIR 1922 Lah 73.*

(2) A resistance can be said to be intentional only where the person offering resistance knows that an arrest is being or is about to be made. *AIR 1928 Lah 324.*

(3) A rescue as distinguished from resistance or obstruction need not be intentional. *AIR 1969 Mad 408.*

6. Knowledge of facts leading to detention.—(1) It is not necessary that the accused should be aware of the facts leading to the detention or arrest of the person rescued. *1971 CriLJ 910.*

7. Arrest or custody must be lawful—General.—(1) It is essential for a conviction under this section that the prosecution should show that the apprehension or arrest made or attempted to be made in lawful in every way. *AIR 1932 Pat 171.*

(2) The obstruction to the arrest of a boy under 7 years of age for a theft committed by him is not an offence, for under S. 82 of the Code nothing is an offence which is done by a child under 7 (9 in Bd.) years of age, although if the boy rescued is over 7 and under 12 years, S. 83 would apply, and the arrest would be prima facie legal and the rescue will be an offence. *AIR 1916 Mad 642.*

(3) Where the first transaction beginning with the arrest of the offender comes to an end when he is let off from custody and no effort is made then to pursue and rearrest him, a subsequent arrest by the private person will not be a part of same transaction nor will be covered by the provision in S. 37, Criminal P. C. or any other provision of law. *AIR 1955 Pat 106.*

(4) Where the person who was arrested for an alleged act which would be a cognizable offence was acquitted of that offence on the ground that no such act constituting the offence was committed at all, the arrest must be taken to have been illegal. *AIR 1966 Pat 286.*

(5) Where the offence was not committed in the view of the person arresting the offender the arrest would be illegal. *AIR 1932 Lah 263.*

8. Defective warrants—Apprehension whether lawful.—(1) Rescue from custody is no offence when warrant of arrest is defective. But if the persons rescuing cause hurt to the constable unnecessarily they would be guilty under S. 323, P. C. *AIR 1918 Pat 252.*

(2) When a police officer arrests person, not on his own initiative, but on a verbal order of his superior under S. 55, Criminal P.C., such an arrest is illegal and hence the custody of the arrested person is also illegal. *AIR 1941 Rang 180.*

(3) Any person who is being arrested under a warrant has a right to ask the officer arresting him to show him the warrant. When the warrant is not shown to him and arrest is made, such an arrest will not be legal arrest. *AIR 1924 Mad 555.*

(4) Under S. 70, Criminal P.C., the seal of the Court is essential to the validity of a warrant of arrest. An arrest made under a warrant which bears no seal of the Court issuing it, is illegal. *AIR 1915 Cal 737.*

(5) A Revenue or Civil warrant for arrest should state the name or description of the person authorised to arrest. Otherwise the arrest would be illegal. *AIR 1932 All 692.*

(6) The issue of a non-bailable warrant in a case in which the accused are charged for a bailable offence is not illegal and resistance to the arrest under such a warrant will be an offence under this section. *AIR 1939 All 156.*

(7) Under S. 70(2), Criminal P. C. a warrant of arrest remains in force until it is cancelled by the Court or is executed. Hence, a warrant executed beyond its returnable date is valid and nay resistance to arrest will amount to an offence under this section. *AIR 1928 Pat 466.*

(8) Where the warrant has been directed to be issued, by the presiding officer who took cognizance, his successor in office can sign the warrant and an arrest effected in pursuance of it would be lawful. Any resistance to an arrest under such a warrant will amount to an offence under this section. *AIR 1932 Pat 175.*

9. Detention in custody must be lawful.—(1) Where an accused convicted by the Gram Kutchery is being taken to jail under a warrant not by the village chowkidar as required by the Rules but by some other person not so authorised and the convict is rescued from the custody, no offence under this section is committed as the custody is not lawful. *(1955) ILR 33 Pat 674.*

(2) Under S. 63 of the Forest Act, a Forest Officer cannot arrest without warrant, persons committing an offence under S. 29 and if he arrests without a warrant, his custody of the arrested person is not lawful, within the meaning of this section. *AIR 1927 Cal 516.*

(3) A forest guard arresting a person for an offence under Sec. 374, P.C. and not for any offence under the Forest Act—Held detention of accused was not lawful. *1979 BLJR 578.*

(4) An Excise Officer acting under S. 15 of the Opium Act has lawful authority to arrest a person who sells a black substance alleging it to be opium. Hence the custody of such person arrested by the Excise Officer is lawful custody. *AIR 1917 Cal 426.*

(5) A sailor of United States Navy was absent over leave and was arrested in Hamilton City, Bermuda by U.S. shore patrol and was placed in custody in wagon. The accused who was a Bermudan civilian released the sailor by opening the door. This incident took place on territory which was not included in the area leased to United States under U. S. bases (Agreement) Act. The arrest of the sailor was lawful under United States law and was in respect of matters concerning discipline within S. 9(1) of the Act. The accused was convicted under S. 111 Bermuda Criminal Code for aiding the sailor to escape from lawful custody—Held that the sailor arrested as above must be considered to be in lawful custody within the meaning of Ss. 110 and 111 of Burmuda Criminal Code and the conviction of the accused was proper. *AIR 1955 NUC (England) 4384.*

10. Arrest and custody by policeman.—(1) An arrest made under Section 41, Criminal P.C., would not be illegal merely because the person arresting had knowledge of the issue of such warrant. *AIR 1918 Mad 514.*

(2) Where a Sub-Inspector of Police not present at the scene of arrest, directed his constables orally to bring certain person with papers to the police station, the order does not amount to a direction for arrest within the meaning of Section 55, Criminal P. C. The arrest by the constable is illegal and the person resisting such an arrest is not liable for an offence under this section. *AIR 1940 Pat 361.*

(3) Where, on the requisition of a police officer of one police station, the accused in a cognizable case, found in the limits of another police station, is arrested by officers of the latter station in conformity with provisions of Sections 48 and 41(9), Criminal P. C., the arrest and custody of the arrested person is legal and the person who rescues him will be guilty of an offence under this section. *AIR 1946 Cal 314.*

(4) A man cannot be arrested by the police for a non-cognizable offence without a warrant and the Police Officer having the custody of the arrested person is not lawfully detaining him. Therefore, the rescue of the arrested person by others will not amount to an offence under this section. *(1941) 22 PatLT 29.*

(5) If the prosecution mentioned is S. 41(1)(c), Criminal P. C., is not proved the arrest of a person under that clause is illegal. Rescuing such a person from the custody of the Police Officer will not amount to an offence under this section. *AIR 1936 Pat 249.*

11. Arrest by private person.—(1) Where a private person arrests a person and makes over the arrested person to a village servant, the custody of the village servant is lawful. *AIR 1932... 214.*

(2) It is necessary that the non-bailable and cognizable offence must be committed in the view of the private person, for the private person to be entitled to arrest the offender. Where, therefore, the private person arrested the offender after he had committed the crime, which was not within the view of the private person or was bailable, the custody of the private person was held not lawful. *1974 All WR (HC) 26(26).*

12. Procedure.—(1) In cases under this section the proper person to make a complaint is the officer form whose custody the escape or rescue has been effected, but a complaint by another person aware of the facts is not a nullity. A Magistrate is competent to make a complaint as a common informer. *AIR 1933 Lah 884.*

(2) An accused charged for an offence under this section cannot be tried jointly with the offender who has been charged for theft committed earlier in point of time and whose rescue is the subject-matter of the charge under this section. *(1909) 9 CriLJ 147 (Cal).*

(3) Where a rescue was effected by the use of force, the use of force and the rescue would constitute a single transaction and the accused cannot be convicted both under S. 353 and also under this section. *AIR 1954 HimPra 68.*

(4) Cognizable—Warrant—Bailable, if the case falls under the first clause otherwise not bailable—Not compoundable—Triable by any Magistrate. If the case comes under second, third and fourth clauses the case is triable by Metropolitan Magistrate or Magistrate first class and if it comes under last clause the case is triable by Court of Sessions, Chief Metropolitan Magistrate, District Magistrate, Additional District Magistrate.

13. Sentence.—(1) Where the obstruction caused is such as not to constitute a serious offence, then a heavy punishment is not called for. *AIR 1930 Pat 344.*

(2) An offence under this section is a serious one and the accused can plead no circumstance in extenuation. *AIR 1966 Mys 20.*

(3) To release accused on admonition upon his conviction under S. 225, Penal Code for rescuing another person from lawful detention will be wrong in principle where law and order situation is deteriorated. *1971 CriLJ 910.*

14. Practice.—Evidence—Prove: (1) That the person in question was detained in custody.

(2) That such detention was in respect of an offence.

(3) That such detention was lawful.

(4) That the accused rescued or attempted to rescue such person.

(5) That he did so intentionally.

There must be a clear finding as to the intention with which the accused acted. *(23 CriLJ 3).*

15. Charge.—The charge should run as follows:

I, (name and office of the Judge/Magistrate) hereby charge you (name of the accused) as follows:

That you on or about the—day of—at—intentionally offered resistance or illegal obstruction to the lawful apprehension of XY for the offence of—under section—of the Penal Code (or rescued or attempted to rescue) the said XY from the custody in which the said XY was lawfully detained for the offence of—and that you thereby committed an offence punishable under section 225 clause—of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 225A

[18]**[225A. Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for.**—Whoever, being a public servant legally bound as such public servant to apprehend or to keep in confinement any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished,—

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.]

Cases and Materials

1. Scope.—(1) An omission to execute a warrant should not be confused with omission to apprehend; when a warrant was issued to an officer directing him to arrest and produce a witness, and even though he received it late, he produced the witness on the scheduled date along with the warrant,

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18. 225A and 225B were substituted by the Indian Criminal Law Amendment Act, 1886 (X of 1886), s. 24 (1), for section 225A, which was earlier inserted by Act XXVII of 1870, s. 9.

the technical non-execution of the warrant will not amount to an offence under S. 225-A. *1979 CriLR (Mah) 15.*

(2) Villagers assisting the Headman of the village in arresting a person are not public servants within the meaning of S. 21. Where a person was arrested for theft of cattle and made over to villagers for being taken to the police station and the arrested person escaped through their negligence, it was held that the villagers could not be convicted under this section. *AIR 1917 Upp Bur 8.*

(3) An act is said to be done negligently when it is done without exercising due care and caution. Where a person properly arrested is confined in a room, the omission to secure the door of the room, which was the main cause of escape of the prisoner from custody is an indication of negligence. *AIR 1930 Pat 103.*

(4) Under S. 41, Cr. P. C., a police officer can arrest without a warrant or an order of a Magistrate any person who comes within the purview of the said section. Confinement of such a person, though arrested without a warrant is legal within the meaning of this section. *AIR 1930 Pat 103.*

2. Practice.—Evidence—Prove: (1) That the accused is a public servant.

(2) That he was legally bound to apprehend or keep in confinement, the person in question.

(3) That he omitted to apprehend that person, or suffered him to escape from confinement.

(4) That he did as above intentionally or negligently for clause (b).

(5) That the offence does not fall under section 221, 222 or 223 or any other law.

3. Procedure.—(a) In case of intentional omission or sufferance: Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

(b) In case of negligent omission or sufferance: Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—being a public servant legally bound as such public servant to apprehend or to keep in confinement one XY intentionally or negligently omitted to apprehend the said XY (or suffered the said XY to escape from confinement) and that you thereby committed an offence punishable under section 225A of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.—Sanction for prosecution of the public servant is necessary.

Section 225B

[18][**225B. Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.**—Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

Cases and Materials : Synopsis

1. Scope.—(1) The offence under this section consists of resistance or obstruction to lawful apprehension or escape or rescue from lawful custody or attempt to secure such escape or rescue. In order that the act of the accused may amount to offence under section 225B, two pre-requisites are to be satisfied: (i) that the arresting agency had the legal authority to arrest, and (ii) that the warrant of arrest had been legally issued by a competent authority *(1957 CrLJ 1264)*. Rescuing the person arrested from the custody of Munsif's Court employees even with the knowledge that they were officers of Court would not expose the accused to punishment if the arrest itself was illegal.

(2) This section will apply to cases of apprehension of persons under civil warrants and to escape or rescue from custody in civil jail or to cases of confinement under a warrant under S. 129(2) of the Criminal P. C., or to cases of persons in the custody of the police pending proceedings under S. 109, Criminal P. C. *AIR 1921 All 281.*

2. Intention.—(1) The resistance or obstruction, etc., must be intentional. A resistance is intentional only when the person who makes the resistance knows that he is being or is about to be arrested. *AIR 1928 Lah 324.*

3. Resistance or illegal obstruction.—(1) In order to justify a conviction under this section, on the ground of resistance or obstruction to apprehension, there must be an overt act of resistance or obstruction. *AIR 1923 Rang 231.*

(2) A mere evasion of arrest is not a resistance or obstruction to arrest within this section. *AIR 1917 Mad 182.*

(3) An escape from custody does not amount to resistance or obstruction, though the escape is by itself punishable under this section. *AIR 1927 Lah 708.*

4. Escape from lawful custody.—(1) A refusal to go with the bailiff and sitting down is an attempt to escape. *AIR 1955 Mad 157.*

(2) Where the bailiff did not touch the body of the accused but merely asked the accused to accompany him and the accused ran away, he cannot be said to have escaped from legal custody within the meaning of this section. *AIR 1961 Raj 156.*

(3) Where, after arrest the accused runs away and shuts himself in a room and refuses to come out, his act constitutes an escape from custody. *AIR 1927 Lah 708.*

(4) Even when the escape is effected by the consent or neglect of the person that kept the prisoner in custody, the latter is no less guilty as neither such illegal consent or neglect absolves him from the duty of submitting to the judgment of the law. *AIR 1919 Mad 864.*

(5) A man legally arrested must submit to be tried and dealt with according to law. Even though he may be rescued by his friends, if he takes advantage of this and gets out of the way of the process-server in whose custody he is, he must be considered to escape from lawful detention within the meaning of this section. *AIR 1969 Mad 408.*

5. Apprehension must be legal.—(1) It is resistance or obstruction to the lawful apprehension of a person that is punishable under this section. *AIR 1938 All 120.*

(2) Where the arrest or apprehension is not legal or authorised by law, this section will not apply. *1973 CriLJ 245 (AndhPra).*

(3) Where the imposition of a tax, for the non-payment of which a warrant is issued is itself illegal and ultra vires, the resistance to its execution cannot be punishable under this section. *AIR 1928 Lah 322.*

(4) If a person is arrested under some specific provisions of law, the arrest must be justified only under that provision: it is not open to the prosecution to attribute the arrest to some other provision. If the earlier provision of law is not applicable and the arrested person has offered resistance, then he is not guilty of an offence under this section. *AIR 1924 Mad 555.*

6. Detention must be lawful.—(1) A person cannot be convicted under this section for an escape or attempt to escape unless the custody in which he was detained was lawful. *AIR 1950 Hyd 20.*

(2) The person from whose custody the rescue is effected or escape is made must have had authority to lawfully detain the person rescued. *AIR 1954 Mad 321.*

(3) Where an order of a Civil Court committing a judgment-debtor to custody is illegal, the judgment-debtor cannot be convicted under this section for escaping from the custody. *AIR 1962 Ker 258.*

(4) Where the order of a Civil Court committing the judgment-debtor to the custody of the process-server is lawful, then the custody of the process-server is lawful and escape from such custody amounts to an offence under this section. *AIR 1933 Mad 278.*

7. Apprehension under a warrant—General.—(1) When an arrest is made under the authority of a warrant, it is absolutely necessary that the warrant shall conform to the mandatory provisions of the section under which it is issued. *AIR 1937 Pat 603(605).*

(2) It is the duty of the Court to issue the warrant in a proper form. When the warrant is incomplete, this section will not apply. *AIR 1962 Ker 258.*

(3) It is of no consequence that the person who is arrested is unable to read the warrant and had no knowledge as to whether the warrant is or is not properly filled up. *AIR 1962 Ker 258.*

(4) In order that the act of the accused may amount to an offence under this section, two ingredients are to be satisfied, viz., (a) that the Amin had the legal authority to arrest the judgment-debtor and (b) that the warrant or authority had been legally issued by a competent authority. *AIR 1961 Ker 331.*

(5) Where the search warrant issued to a police officer empowered him to search the house of a particular person to find out a woman who was alleged to be unlawfully detained and the woman was not found in the house but was found in a field and was taken custody of and the accused rescued her from such custody, it was held that the custody was not lawful. *AIR 1928 Pat 550.*

(6) It does not matter that the accused had torn up the defective warrant in pursuance of which the arrest was effected. *AIR 1923 All 87.*

(7) A distinction must be made between a warrant which is illegal and a warrant which is only informal. *AIR 1926 Sind 190.*

(8) An arrest is not illegal merely because the warrant was not addressed to the bailiff of the Court by name but only to the 'bailiff of the Court'. *AIR 1915 Mad 225.*

(9) The warrant for the arrest of a judgment-debtor must be issued to a person named and when the warrant is not so issued, the judgment-debtor who escapes from the custody of the person executing the warrant does not commit an offence under this section. *AIR 1962 Ker 258.*

(10) In a case where there was a simultaneous issue of warrant and notice and the judgment-debtor refused to accept the notice and resisted the execution of warrant, it was held that the conviction for an offence under this section is sustainable. *AIR 1932 Pat 315.*

8. Seal of the Court in the warrant.—(1) The omission of the seal of the Court on a warrant renders it void and a person offering resistance to apprehension on such a warrant does not commit an offence under this section. *AIR 1939 Rang 320.*

9. Necessity to show the warrant.—(1) A Civil Court's warrant of arrest need not be shown to the person to be arrested in the first instance but it is the duty of the bailiff to acquaint him with the contents of the warrant and if the accused then wants to see the warrant it would be the duty of the bailiff to show the warrant to him. *AIR 1921 Cal 79.*

(2) An officer with a warrant of arrest must show the warrant to the person to be arrested. *AIR 1916 All 53.*

10. Identity of the person to be arrested.—(1) If the description in the warrant of the person to be arrested is wrong, it makes the warrant invalid and the arrest illegal. *1961 Ker LJ 695.*

(2) Where an arrest warrant described the accused as plaintiff instead of as defendant but there was no mistake about the name or identity of the accused, it was held that the warrant was not illegal and that the conviction was not bad unless the accused had been prejudiced. *(1926) 51 MadLJ (Notes) 36.*

11. Delegation of authority.—(1) The delegation of authority to execute a warrant must be made properly. An endorsement to that effect on the warrant is prima facie evidence of the authority of the person to whom the warrant is delivered by the Nazir for execution. Where, however, there is no such endorsement on the warrant, the delegation of authority cannot be considered as proper and consequently the arrest effected by the person to whom the warrant is handed over for execution becomes illegal. *AIR 1962 Ker 258.*

(2) The warrant must be signed by the person who has been duly authorised to sign it. *AIR 1938 Mad 536.*

(3) The fact that the person who had no authority to sign the warrant had been doing so for a long time will not make the warrant legal. *AIR 1934 Mad 206.*

(4) The Nazir of the Court is incompetent to extend time for the execution of a warrant, but where the extension is endorsed by the same officer who has originally issued the warrant and the endorsement appears on the warrant itself, the warrant is legal. *AIR 1926 Cal 605.*

12. Sentence.—(1) A nominal punishment (fine of Tk. 1/-) was held sufficient where on the facts of the case, the offence was held to be a technical one. *AIR 1933 Mad 278.*

13. Procedure.—(1) In cases under this section, the proper person to make the complaint is the officer from whom the escape or rescue has been effected, but a complaint by another person aware of the

facts is not a nullity. A Magistrate is competent to make a complaint as a common informer. *AIR 1933 Lah 884.*

(2) The findings of the lower Court that one of the accused escaped from the arrest and another accused assisted him to escape cannot be challenged in revision under S. 401, Criminal P. C., when there is evidence on record that justified the finding. *AIR 1945 Mad 409.*

(3) The High Court will not interfere in revision with an order of acquittal, where the institution of the proceedings itself is irregular. *AIR 1925 All 318.*

(4) Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

14. Practice.—Evidence—Prove: (1) That the accused offered some resistance or illegal obstruction.

(2) That he did so (a) to prevent the lawful apprehension of himself or of any other person, or (b) to escape or attempt to escape from any custody in which he is lawfully detained, or (c) to rescue or attempt to rescue some person from some custody in which that person was lawfully detained.

(3) That he did as in (1) intentionally.

15. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—intentionally offered resistance or illegal obstruction to the lawful apprehension by—of X or yourself or escaped or attempted to escape from the custody of—in which you were lawfully detained or rescued or attempted to rescue one X from the custody of—in which he was lawfully detained and that you thereby committed an offence punishable under section 225B of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 226

[19][* * * * * * *]

Section 227

227. Violation of condition of remission of punishment.—Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Cases and Materials

1. Scope.—(1) It is for the Court to decide under this section whether a conditionally released prisoner had knowingly violated the conditions of which remission was granted to him and until he has been found guilty under this section it is not for the jail authorities to say that he had committed an offence under this section. *AIR 1933 Rang 28.*

19. Section 226 was omitted by Ordinance No. XLI of 1985.

(2) A Magistrate cannot pass a sentence on a person for an offence under this section in excess of what he is empowered to pass under the Criminal P. C. *AIR 1929 Rang 279.*

(3) In a charge for an offence under this section the fact of the conviction of the accused, its date and the sentence passed should be proved by documentary evidence. So also, the facts that the accused person was granted remission of punishment and the conditions on which the remission was granted must be proved by documentary evidence. But the fact that the accused is the person convicted, sentenced and granted remission and that he had committed a breach of a condition of the remission may be proved by oral evidence. *AIR 1929 Rang 278.*

2. Practice.—Evidence—Prove: (1) That the nature and extent of the original punishment to which the accused had been sentenced.

(2) That such punishment had been remitted.

(3) That such remission had been granted to and accepted by the accused upon a certain condition.

(4) That the accused violated such condition.

(5) That he did so knowing that he was violating such condition.

(6) That whether the accused has already suffered any part of the original punishment.

3. Procedure.—Not cognizable—Summons—Not Bailable—Not compoundable—Triable by the Court by which the original offence was triable.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—were sentenced in case no.—of—by the Court—of—to (mention the punishment) and which punishment was remitted on—by the order of—on your accepting the condition, to wit—and which you accepted and which you knowingly violated in that on or about the—day of—your—(state the nature of violation) and that you thereby committed an offence punishable under section 227 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 228

228. Intentional insult or interruption to public servant sitting in judicial proceeding.—Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand [1][taka], or with both.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *The section and S. 345, Cr. P.C.*
3. *Intention.*
4. *Public servant.*
5. *Judicial proceedings.*
6. *Sitting in a stage of a judicial proceeding.*
7. *Interruption.*
8. *Conduct of an advocate.*
9. *Application to Court.*
10. *Illustrative cases.*
11. *High Court and Subordinate Courts—Jurisdiction for proceeding in contempt.*
12. *Duty of Court.*
13. *Apology.*
14. *Procedure.*
15. *Practice.*
16. *Charge.*
17. *Complaint.*

1. **Scope of the section.**—(1) The crime of contempt of court lies in the disrespect shown to the person administering justice and the need to protect him against intentional insults and avoiding interruption of proceedings. This section cannot be invoked when contempt of court is committed outside the Court and when the Court is not sitting. Mere fact that a judicial officer feels insulted is not the test *(AIR 1943 All 97)*. To constitute an offence under section 228: (a) there must be either insult or interruption, (b) the insult or interruption must be intentional, and (c) the insult must have been offered or the interruption caused to a public servant sitting in any stage of a judicial proceeding. The offence of contempt of court except in the matters dealt with in this section has been made punishable under the Contempt of Courts Act and in the case of superior Courts under the Constitution of the People's Republic of Bangladesh. An intentional disobedience by a person of the order of the Court leads to the conclusion that the person offered insult to that officer *(AIR 1960 Pat 309)*. The Supreme Court in a case reported in *AIR 1959 SC 102* pointed out that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals, it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party the authority of the Court is lowered and the sense of confidence which people have in the administration of justice by it is weakened. Any criticism of the conduct of a Judge which cannot possibly have the tendency to obstruct or interfere with the administration of justice, is not contempt of court, even though it may be a libellous attack on the Judge. Thus an attack on a Judge for conduct not connected with his judicial functions will not come within the mischief of contempt of court. The mere fact that an act of a person has annoyed a Judge cannot make it contempt of court *(PLD 1961 Lah 51)*. The procedure under this section is summary trial *(PLD 1967 Lah 1231)*. But the right of the subjects are guided by making it imperative on the Court to prepare the record as provided in section 481, CrPC. As the procedure under section 480, CrPC is in the nature of a summary trial the necessity is all the greater for a full and clear record which is not only a guarantee of the coolness and judicial temper of the presiding officer but which affords materials for the Appellate Court to proceed on *(1969 PCrLJ 627)*. An omission to record the particulars required by this section is fatal to the proceedings under section 480, CrPC. The record of the Court must show the nature and the stage of the judicial proceedings in which the Court was interrupted or insulted and the nature of the interruption or insult. The record should show how the accused had acted or what he had stated or what caused interruption or insult. In respect of an alleged contempt under section 228, PC it is necessary for the court to state to the accused, the particulars of the offence of which he is accused and to give an opportunity to him of explaining and correcting any misapprehension as to what had, in fact, been said or meant by him. This opportunity is all the more necessary to be given in a summary proceeding under section 480 as the Court itself is the prosecutor and the prosecution witness and there is to be no trial or examination of witnesses and the only opportunity for the accused to make a statement is in reply to the question put to him under section 242, Cr.P.C. The failure to do so amounts to miscarriage of justice and is fatal to the proceeding *(1968 PCrLJ 628, AIR 1963 Tri 50)*. An offence under this section cannot be tried except by a Court and under section 228 of the CrPC the Court itself must be the Court which has been interrupted or insulted. In such cases where the offence falls under section 228, Penal Code, the High Court Division has no jurisdiction to proceed to try the accused for contempt of Court *(1969 PCrLJ 920)*.

(2) In the facts and circumstances of the present case, when the offender begged to be excused, the matter ought to have been dropped. *Moshiur Rahman (Md) Vs. State (Criminal) 53 DLR 42.*

(3) Council Fees of a lawyer vary from lawyer to lawyer depending upon many factors. The Tribunal shall have the same powers as vested in a Civil Court for the purpose of inquiry and every enquiry as such shall be deemed to be judicial proceeding within the meaning of sections 193 and 228

of the Penal Code—A Tribunal shall be deemed to be a Civil Court for the purposes of sections 480 and 482, CrPC. *42 DLR 201.*

(4) TI parade held for identification of accused is not a judicial proceeding while an officer disobeys the order of a Magistrate to bring an accused person for T I parade, the officer disobeying that order is not guilty of contempt of Court, it not being a judicial proceeding and therefore he cannot be hauled up under section 228 of the Penal Code. *29 DLR 355.*

(5) Contempt of Court—Object of the section is to guard the respect due to a Court of law and against interruption and insult while acting as such. Court's duty is to see that what is objected to really amounts to insult or interruption of the work. Contempt proceeding is not to be used as a protection to a Judge in his individual capacity. Underlying idea is to maintain the authority of the Court in the estimation of the public and that confidence in justice is not shaken. While sitting as a Court of law the judge should not be too sensitive, should have a measure of indulgence to lawyers when arguing case. *29 DLR 311.*

(6) Contempt of Court—For breach of the Court's order, when is and when is not. It is no doubt true that for justifying a committal for breach of a prohibitory order it is not necessary to actually prove service of the order upon the party. Jurisdiction to punish by such a short-handed method should be exercised with circumspection only in extreme cases upon clear proof of a wilful disregard. *19 DLR (SC) 103.*

(7) Ingredients of the section that must be satisfied—namely, insult or interruption to a "public servant" in a "judicial proceeding" held before an authority which must be a "Court". Section 228 is wide enough for the purpose of bringing into the mischief of the section any person guilty of insulting or causing interruption to a public servant engaged in a judicial proceeding. In the first place, the "public servant" mentioned in the section, must be engaged in a "judicial proceeding". The CrPC does not permit trial of any offence under the Penal Code except by a Court. Only a Court can conduct a trial under section 228 of the Penal Code. An offence under section 228 of the Penal Code cannot be tried, except by a Court and under section 28 of the CrPC the Court itself must be the Court which has been interrupted or insulted. In the present case conviction under section 228 Penal Code by the respondent—the Additional Deputy Commissioner, is wholly without jurisdiction because he was not engaged in a judicial proceeding, he was not acting as a Court, and he could not (even if he is treated to be a Court) pass a sentence of fine exceeding Taka 200.00. *19 DLR 354.*

(8) A revenue officer not authorised to pass a sentence of fine (or imprisonment) for contempt of Court under section 480, CrPC he not being designated as a Court within the meaning of "any Civil, Criminal or Revenue Court". His remedy for contempt lies in making of a complaint under section 28, CrPC. Section 480, CrPC does not empower an Industrial Court to impose punishment for insult or interruption to itself. *17 DLR (SC) 477.*

(9) Preliminary inquiry in respect of an offence mentioned in the section not mandatory—In respect of a case under section 228, PC the court itself can try the offence. The Magistrate has an option when the charge is one under section 228, PC to try the case himself or send it to some one else. The offence under section 228 is one which in the very nature of things is committed in the full view of the public servant engaged in a judicial proceeding and as such, in a case of this nature omission to record a finding cannot be considered to be fatal if it appears from the facts and circumstances of the case that such a trial would be in the interest of justice. *16 DLR 519.*

(10) Contempt of Court—conduct that tends to bring the administration of law by a Court into disrespect amounts to a contempt. This power should be used sparingly and only in serious cases, and that Court should not be either unduly touchy or over-astute in discovering new varieties of contempt, for "its usefulness depends on the wisdom and restraint with which it is exercised". Every non-disclosure of a relevant fact or abuse of every process of Court, because it has remote possibility of deflecting justice—does not amount to contempt. In a contempt proceeding a reprimand is a recognised move of punishment (*Ref 1969 Pak CrLJ 627) 15 DLR (SC) 150.*

(11) Provisions of the section to be applied immediately. Proceeding under section 228 follow the procedure laid down in section 480, CrPC and the provisions of that section have to be applied by the Court then and there before its rising. *2 DLR 80.*

(12) Imputing impartiality of justice or Court to its face constitutes gross contempt. *7 PLD 16 Lah.*

(13) Contempt of Court—Cases of—to be treated with much discretion—Weapon of contempt "to be used sparingly and always with reference to administration of justice". Person alleged to have adopted rude behaviour towards Judge when he was not engaged in judicial proceeding but was acting in his administrative capacity—No case of contempt—conduct, imputed to person, falling within the purview of section 228, PC—High Court has no jurisdiction for proceeding in contempt in such case. *1969 PCrLJ 920 (SC).*

(14) Advocate, without ceremony of employing normal forms of address, addressing Court in insolvent tones, criticising court's order as "wrong", refusing to leave Court room when ordered to withdraw but leaving Court room, when threatened of forceful expulsion, uttering words "I am going but I shall not withdraw my remarks" thereafter loudly and vehemently criticising and denouncing Court's order outside court room and inciting party affected to disobey Court's order—Held: guilty of gross contempt—Maximum punishment awarded—Jurisdiction—Contempt of Court—Proper tribunal to decide—Judge in whose presence contempt committed. Apology—only unreserved and unconditional apology to be considered for condonation of offence or for leniency in punishment—Contemner justifying his misbehavior in his statement but adding at end that he had no desire to commit contempt of court, that he assured unabated respect for it and hastened to tender personal apologies if he had unwittingly hurt feelings of Court—Words held worse than no apology. *1967 PLD 1231 Lah.*

(15) Where a person publishes certain allegations against a judicial officer, and such allegations are punishable as defamation under Section 499 and are not punishable under any specific provision of the Code as contempt of Court, the jurisdiction to the High Court to take action against him for contempt of Court in respect of such allegations, under the Contempt of Courts Act, is not barred by the Act irrespective of the availability of the remedy of prosecution of the offender for defamation under S. 499. *AIR 1952 SC 149.*

(16) Where, the matter charged is not only an insult to an individual public servant but amounts to what has been termed "scandalising the Court itself", the accused person will be liable to proceedings for contempt of Court and the Contempt of Courts Act read with S. 228 of the Code will not be a bar to such a proceeding. *AIR 1959 SC 102.*

(17) The aim of all proceedings for contempt of Court is to deter men from offering indignities to a Court of Justice. *AIR 1952 SC 149.*

(18) The object of contempt proceedings is not to afford protection to judges personally from imputations to which they may be exposed as individuals: it is intended to be a protection to the

public whose interests would be very much affected if, by the act or conduct of any party, the authority of the Court is lowered, and the sense of confidence which people have in the administration of justice by it is weakened. *AIR 1954 SC 10.*

(19) The essential ingredients of this section: (a) intention, (b) insult or interruption to a public servant, and (c) the public servant insulted or interrupted must be sitting in any stage of a judicial proceeding. *AIR 1959 SC 102.*

(20) The offence dealt with by this section is a criminal contempt as distinguished from a civil contempt which consists of disobedience of an order or process of a Court causing private injury to persons. *AIR 1953 Cal 627.*

2. This section and S. 480, Cr. P. C.—(1) The difference between S. 228, P.C. and S. 480, Cr.P.C. is that—(i) while S. 480, Cr.P.C. empowers a Civil, Criminal or Revenue Court, to take action when an offence described in Ss. 175, 178, 179, 180 or 228 of the P.C. is committed in its presence. S. 228, P.C. empowers any public servant to take action when a person intentionally offers insult or causes interruption to him while he is sitting in any stage of a judicial proceeding. (ii) S. 480, Cr.P.C. empowers the Courts referred to therein to take action not only, when offence is committed under S. 228, P.C. but also under other sections referred to therein whereas the power conferred under S. 228 on a public servant is limited only to the extent that if any person offers insult or causes any interruption to him while he is sitting in any stage of a judicial proceeding he can punish him. *1978 CriLJ 1040 (Guj).*

3. Intention.—(1) To constitute an offence under this section there must be an intentional insult or interruption of proceedings. *1974 CriLJ 211 (Mys).*

(2) The question is not whether a judicial officer felt insulted but whether an insult was intended. *AIR 1968 Cal 249 : 1968 CriLJ.*

(3) Whether there is an intention to offer insult to the Magistrate trying the case or not must depend on the facts and circumstances of each case. *AIR 1959 SC 102.*

(4) Where an accused, while being questioned under S. 313, Criminal P. C. called the Judge "a prejudiced Judge" and on being asked to withdraw the statement refused to do so, it was held that the words used and the conduct of the accused in not withdrawing those remarks go to show that he had the intention to insult the Judge. *AIR 1922 Bom 261.*

(5) Where the presiding officer of Court asked the accused to quit the Court but the accused insisted upon staying in spite of the warning that action for contempt of Court might be taken against him, it was held that the conduct of the accused in remaining in the Court in spite of the warning showed that he had the necessary intention. *AIR 1960 Pat 309.*

(6) The exchange of remarks by accused while being examined by the Court does not amount to intentional insult or interruption. *AIR 1925 Nag 403.*

(7) Audible remarks which interrupt the proceedings do not amount to intentional insult or interruption. *AIR 1916 Mad 648.*

(8) The fact that an application to the Court by an advocate, for transfer of a case from that Court to another, is not happily worded does not give rise to a presumption that the petitioner intended to insult the presiding officer. *AIR 1916 All 330.*

4. Public servant.—(1) Member of a 'Panchayat Adalat' is a public servant. *AIR 1952 All 306.*

(2) An advocate, even though a part of the machinery of the administration of justice is not a public servant. *AIR 1966 Bom 19.*

5. Judicial proceedings.—(1) The expression 'judicial proceeding' is a general expression for proceedings in Courts, for the course authorised to be taken in various cases to secure the determination of a controversy; to obtain the enforcement of a right or the redress or the prevention of a wrong. *ILR (1973) HimPra 1301 (1304).*

(2) An enquiry is judicial if the object of it is to determine the jural relations between one person and another or a group of persons or between him and community generally, and in the absence of such an object in view, even a Judge cannot be said to act judicially. *AIR 1965 HimPra 25.*

(3) The following proceedings were all held to be judicial proceedings:

(a) Proceedings before the Debt Settlement Board under S. 50 of the Bengal Agricultural Debts Act, 1935. *AIR 1940 Cal 286.*

(b) Proceedings under the Income-tax Act are deemed to be judicial proceedings for the purpose of S. 193, S. 228 and S. 196 of P.C. *AIR 1964 SC 1154.*

(c) Proceedings before a Sub-Registrar. *(1874) 13 BengLRAp 40.*

(d) Proceedings of the Conciliation Board constituted under the Relief of Indebtedness Act. *AIR 1938 Lah 366.*

(e) Enquiry by Customs Officer under the Customs Act. *AIR 1971 SC 1087.*

(f) Proceedings before the Rent Control and Eviction Officer are judicial proceedings within the meaning of Ss. 193 and 228 of P.C. *AIR 1982 SC 1238.*

(4) The following have been held not to be judicial proceedings:

(a) Proceedings before the Settlement Officer under the Holdings Act. *AIR 1965 Punj 454.*

(b) Proceedings in departmental enquiry before a District Magistrate. *(1906) 3 CriLJ 376.*

6. Sitting in a stage of a judicial proceeding.—(1) In order that the act of the accused should amount to an offence under this section it must be done while the public servant is sitting in any stage of a judicial proceedings. *(1884) ILR 10 Cal 109 (PC).*

(2) Where the evidence does not disclose that the public servant was sitting in any stage of a judicial proceeding the conviction under this section cannot stand. *AIR 1959 SC 102.*

(3) The mere fact that the judicial proceeding is pending on the file of the public servant is not sufficient. *1971 CriLJ 742 (Orissa).*

(4) Where the order of the Magistrate showed that he was engaged in the trial of criminal cases and that he had finished recording the deposition of a witness and was going to proceed with the recording of other depositions, when the interruption occurred, it was held that this was sufficient to indicate the case in which he was engaged and the stage at which he was interrupted. *AIR 1953 Hyd 285.*

(5) Where the record of the proceedings do not show the nature and the stage of the judicial proceedings in which the Court was sitting and the nature of the interruption or insult, the conviction under the section cannot be upheld. *1969 CriLJ 582(583) (DB) (Raj).*

(6) The failure to state in the order convicting the accused under this section that the judge was sitting in a stage of judicial proceeding and the nature of the proceeding in which he was so sitting, are not irregularities curable under S. 465 of the Criminal P.C. *AIR 1931 Nag 193.*

(7) The pronouncement of judgment is a stage of judicial proceedings. *AIR 1952 All 306.*

(8) An enquiry conducted by an officer of the Railway Protection Force is a judicial inquiry. *1970 All CriR 437.*

(9) A private interview with a District Magistrate is not a stage of judicial proceeding. *AIR 1948 Sind 97.*

(10) Magistrate dismissing complaint under S. 203, Cr. P. C, and directing complainant to fetch his lawyer—thereafter Magistrate is not sitting in a stage of judicial proceeding. *AIR 1956 Orissa 28.*

7. Interruption.—(1) It is not a sine qua non that the alleged interruption must delay the proceedings of the Court for any length of time. The determining factor is not the duration of the time but the nature of the act committed by the accused. *AIR 1918 Lah 65.*

8. Conduct of an advocate.—(1) The law allows some latitude to a member of the Bar acting bona fide in the discharge of his professional duty, so long as his conduct is not clearly vexatious so as to lead to the inference that his intention is to insult or interrupt the Court. *1954 CriLJ 1008.*

(2) The mere circumstance that the counsel expressed his intention to retire from the case or to move for transfer of the case does not constitute a threat or insult. *AIR 1956 Mys 60.*

(3) A counsel may legally advise his client at a criminal trial not to answer questions put to him and when he so advises his client when questioned under S. 313, Criminal P. C., he does not commit an offence under this section. *(1906) 3 CriLJ 134 (Lah).*

(4) When a lawyer is being prosecuted on a charge under this section, and he asserts that he would not tender any apology because he has not committed the offence and that on the question of law involved in the case he would like to secure a pronouncement from the highest Court by making it a test case, he is perfectly within his rights and does not transgress any law. *AIR 1943 Lah 14.*

(5) Every act of discourtesy by counsel does not amount to contempt. *1969 CriLJ 582.*

6. Lawyer's right.—Preventing a legal practitioner in the discharge of his legal duties, illegal. Bench and Bar, complimentary—both unitedly engaged in the performance of an essential public service—Patience and reasonable indulgences coupled with restraint benefit both. The law of contempt is a device to restore the balance in the scales of justice, when upset, by unauthorised interference with processes of law punishment, which may lead to a *cul de sac,* has never been by itself, the end of law.

9. Application to Court.—(1) If application containing an insult to the Judge, is made to the Court when the Judge is not sitting in a stage of judicial proceedings and is filed in the office of the Court, the third essential element (i.e., the judge must be sitting in a stage of judicial proceeding) is wanting and this section will not apply. *AIR 1959 SC 102.*

(2) An application made to the Judge while sitting in a stage of judicial proceeding may contain language which cannot be said to be mere insult to the Judge, and may amount to scandalising the Court itself impairing the administration of justice. Such cases may fall under the Contempt of Courts Act and the High Court may take proceedings under that Act against the offender. *AIR 1959 SC 102.*

10. Illustrative cases.—(1) The following have been held not to be offences under this section:—

(a) Appearing in Court in a drunken state. *AIR 1956 All 258.*

(b) Fighting in Court verandah which did not interrupt the Court proceedings. *AIR 1919 All 330.*

(c) An assessor appearing in a dress consisting of a cap and a scarf. *AIR 1933 Bom 478.*

(d) Prevarication on the part of a witness. *1873 RatUnCriC 69.*

(e) Prevarication and refusal by witness to answer questions. *(1873) 10 BomHCR 69.*

(f) A neglect or refusal to return direct answers to questions. *AIR 1925 All 239.*

(g) Undefined prisoner merely uttering some words and not keeping silent. *(1906) 4 CriLJ 210.*

(h) A lawyer resenting an unwarranted remark by the Magistrate. *AIR 1943 Lah 14.*

(i) A rude remark not addressed to the Court but overheard by it. *AIR 1943 Lah 14.*

(j) An act of a lawyer in calling the attention of the Presiding Officer or the Court to the rude behaviour of the Court peon. *AIR 1943 Lah 14.*

(k) Merely asking a witness not to go as he has to be cross-examined. *AIR 1923 Lah 88.*

(l) Mere audible remarks interrupting Court's proceedings but not intended to cause interruption. *1973 CriLJ 1064 (Orissa).*

(m) Mere refusal to enter into the witness box by a party on being so directed by the Magistrate. *1935 MadWN 704.*

(n) Disobedience to a summons to appear in Court. *1 Weir 215.*

(o) Leaving the Court when ordered not to leave the Court. *1 Weir 215.*

(p) Making signs from outside to a prisoner who is on trial. *1 Weir 214.*

(q) Exchanging remarks with co-accused when he was being examined by the Magistrate. *AIR 1925 Nag 403.*

(r) Mere disturbance of Court work without intention. *1956 BLJR 652.*

(s) Party failing to comply with the Court's order for production of account books. *AIR 1955 NUC (Raj) 4627.*

(t) A guardian giving a minor in marriage without obtaining the Court's permission. *AIR 1933 Pat 142.*

(u) Mere persistence of advocate in putting question to witness after disallowance by Court. *(1972) 13 GujLR 548.*

(v) Counsel stating that he would move for transfer in each and every case before the Magistrate and would see him—No offence. *1969 CriLJ 582 (Raj).*

(w) Person attending Court as witness—Daffadar of Court asking him on orders of Court to stay away from Court hall and to come only when called—Disobedience—No direct order of Court to the person—Held: no offence u/s. 228 is made out. *(1917) 23 MysCCR No. 125, p. 82.*

(x) Refusal of accused to sign statement made by him when required by Court—Offence under S. 180 and not under Section 228, P.C. *(1900) 5 Mys CCR No. 165, p. 852.*

(2) The following may amount to offences under this section:—

(a) Prevarication or persistent refusal to answer questions amounting, under the circumstances, to an interruption to a public servant, sitting in a stage of judicial proceeding. *1889 Rat Un CriC 473.*

(b) Persistently putting irrelevant and vexatious questions after warning. *1867 Pun Re 44, p. 80.*

(c) Protests made to Court with the sole object and intention of interrupting the Court. *AIR 1953 Hyd 285.*

(d) Accused during the hearing of the case making an impertinent threat to a witness in the box. *AIR 1923 All 193.*

(e) Accused abusing the Adhikari (sitting as a village munsif) vulgarly in Court. *1934 Mad WN 398.*

(f) Pleader insisting upon cross-examining a witness on answers given by him to questions put by the Court. *(1903) 8 Mys CCR No. 342, p. 293.*

(g) Accused telling a Magistrate in a judicial proceeding that "the Magistrate was not fit to sit on the chair and that the trial was high-handed". *1977 All Cri R 308(308).*

11. High Court and Subordinate Courts—Jurisdiction for proceeding in contempt.—(1) No power to punish for contempt of an inferior court now exists in the High Court independently of the Contempt of Courts Act. So far as the subordinate Courts are concerned, they have no power to punish for contempt outside the provisions of the Code. *AIR 1930 All 225.*

(2) The High Court has the right to protect subordinate Courts against contempt subject to the restriction that cases of contempt which have already been provided for in the Code should not be taken cognizance of by the High Court. If in its true nature and effect the act complained of is really scandalising the Court rather than a mere intentional personal insult to the Magistrate, the jurisdiction of the High Court to take contempt proceedings is not ousted by the Contempt of Courts Act. *AIR 1959 SC 102.*

(3) Even if the facts of a case disclose an offence which may fall under S. 228, the case may be triable as a contempt under the Contempt of Courts Act if the acts complained of could not be confined to what would be covered by S. 228 of the Code. *AIR 1972 SC 905.*

12. Duty of Court.—(1) It must be considered in each case how insulting the expressions used are and whether there was any necessity for the accused to make use of these expressions. Where there was no necessity to use the insulting expressions and they were intentionally used it would not be wise to pass over such action in silence. *AIR 1943 All 97.*

(2) The Judge should exercise a judicial balance in deciding to take action or not, having regard to the particular circumstances of the case. *AIR 1937 All 171.*

(3) Powers given to judicial officer under this section are given exclusively for the purpose of supporting the dignity of his important office and not for upholding his own vanity. *AIR 1960 Punj 211.*

13. Apology.—(1) Section 484 of the Criminal P. C. provides for the discharge of the accused who is charged with an offence under this section on his tendering an apology, in the circumstances mentioned in that section. *1980 CriLJ (NOC) 1 (All).*

(2) An apology tendered by the accused must be voluntary, unconditional and indicative of remorse and contrition and should be offered at earliest opportunity. Justification of his act by the contemner and at the same time tendering an apology are incompatible and incongruous. Such an apology cannot but be taken to be an afterthought put forward in the hope of avoiding the consequence. Such an apology cannot be entertained. *AIR 1969 Pat 323.*

14. Procedure.—(1) As regards trial two courses are open to the Court before which an offence under this section is committed. It may itself take cognizance of the offence on the same day before the rising of the Court and award punishment, as provided by S. 476 of the Criminal P. C. or it may proceed under S. 480 and make a complaint. *AIR 1969 Pat 323.*

(2) Where as regards an offence under this section the Court acts under S. 476 of the Criminal P. C. it should follow the procedure prescribed by S. 476. *AIR 1963 Tripura 50.*

(3) The Court trying an offence under this section is not bound to hear any evidence. It can rely on its own opinion of what happened and can detain the offender in custody, take cognizance of the offence and sentence him. But all that must be done before the rising of the Court i. e., on the same day. *AIR 1942 Bom 206 (1).*

(4) The record must show the nature and the stage of the judicial proceedings in which the Court interrupted or insulted was sitting and the nature of the interruption or insult, and omission to set forth

the particulars as required by S. 481 Cl. (2) Criminal P. C., is not merely an irregularity which could be corrected by the application of S. 537, but is fatal to the proceedings. *AIR 1968 Cal 249.*

(5) If the facts of a case reveal that offences under Ss. 228 and 353 or 506 of P.C. are committed they cannot be split up in order to avoid the operation of S. 195, Cr. P.C. *1975 Pun LJ (Cri) 15.*

(6) An offence under this section may be tried summarily. *AIR 1952 All 306.*

(7) Not cognizable—Summons—Bailable—Not compoundable—Triable by the Court in which the offence is committed subject to the provision of Chapter XXXV of the CrPC (section 480 CrPC).

15. Practice.—Evidence—Prove: (1) That the person offended is a public servant.

(2) That at the time of the offence, such public servant was sitting in some stage of judicial proceeding.

(3) That whilst he was so sitting the accused offered an insult to such public servant, or caused some interruption to him.

(4) That he did so intentionally.

16. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you—on or about—at—intentionally offered insult or caused interruption namely—to a public servant while he was sitting in a judicial proceeding namely (specify the proceeding) and thereby committed an offence punishable under section 228, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

17. Complaint.—No prosecution case be legally initiated without the previous complaint in writing of the Court concerned or of some other Court to which Court is subordinate (section 195 (b) of the CrPC).

Section 229

229. Personation of a juror or assessor.—Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Materials

1. Scope.—(1) The jury and assessor's trials have been abolished before the birth of Bangladesh.

(2) The onus to establish a plea of insanity is on the accused. But the prosecution had to take the initiative to bring all relevant facts and special circumstances, if any, into light which were in existence prior to commission of the crime. *Nikhil Chandra Halder V. The State 22 BLD (HCD) 197.*

CHAPTER XII
Of Offences relating to Coin and Government Stamps

Chapter introduction.—*At the time the Code was enacted, there were numerous coins or several pieces varying in quality and fineness, but the authors of the Code recommended that Government coins should be protected first. They did not then suggest any measures to protect stamps or currency notes ; but the Chapter was afterwards revised to include stamps. This Chapter now deals with offences relating to coin (sections 230 to section 254) and offences relating to stamps (sections 255 to 263-A). Offences relating to coins comprise counterfeiting of coins and alteration of coins. The offences included in this Chapter are extradition offences. When paper currency was introduced, Secs. 489A to 489E came to be inserted in the Code. Before these sections came to be inserted, such offences were dealt with under Secs. 467 and 471 of the Code.*

The offences relating to coins fall under:—

(1) Counterfeiting : Secs. 231, 232.

(2) Criminal acts of the employees of Mint : Sec. 224.

(3) Alteration of coins : (Secs. 246, 247, 248, 249, 250, 251, 252, 253 and 254).

As regards Govt. stamps the following offences are punishable:—

(a) Counterfeiting : Sec. 225.

(b) In possession : Sec. 256.

(c) Making any instrument : Sec. 254.

(d) Sale of Govt. stamp : Sec. 258

(e) Intending to sell or dispose of : Sec. 259.

(f) Using or giving : Sec. 260.

(g) Fraudulently removing : Sec. 261.

(h) Using used stamp : Sec. 262.

The actual counterfeiting can rarely be directly proved by positive evidence. It is usually made out by the circumstantial evidence such as the finding of coining tools in the offender's house together with pieces of counterfeit money, some in a finished and some in unfinished stage or such other evidence as is sufficient for the drawal of the inference that the offender has been engaged in counterfeiting coins. The definition of counterfeiting given in section 231 is exactly the same in substance as that given in section 28 with the further addition of the words and it is not essential to counterfeiting that the limitation should be exact. Where a trifling varies from the real coin in the inscription effigies or arms, does not take the case out of the statute and although the counterfeit coin was made of a different metal from the real coin as lead, tin, copper etc. gold or silvered over yet it amounted to a counterfeit within the statute.

Section 230

230. "Coin" defined.—[1][Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.]

[2][Bangladesh] coin.—[2][Bangladesh] coin is metal stamped and issued by the authority of the Government [3][* *] in order to be used as money; and metal which has been so stamped and issued shall continue to be [2][Bangladesh] coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.]

Illustrations

(a) Cowries are not coin.

(b) Lumps of unstamped copper, though used as money, are not coin.

(c) Medals are not coin, inasmuch as they are not intended to be used as money.

(d) The coin denominated as the Company's [4][taka] is the Queen's coin.

[5][(e) The "Farukhabad" [4][taka], which was formerly used as money under the authority of the Government of India, is [6][Bangladesh coin] although it is no longer so used.]

Case and Materials

1. Scope.—(1) Taka or paisa of a certain year withdrawn from circulation ceases to be coins within the meaning of this section. An imitation of an ancient coin, gone out of circulation, would not be a counterfeit coin because it is not used as money.

(2) The test of whether a particular piece of metal is money or not is the possibility of taking it into the market and obtaining goods of any kind in exchange for it. For this its value must be ascertained and well-known. That it is known to persons of special skill or information is not sufficient. *(1874) 11 Bom HCR 172.*

(3) A gold mohur of the reign of Shahjahan was held not to be a coin within the meaning of this section as it was not used for the time being as money. *(1908) 4 CriLJ 453.*

(4) An Bangladesh Coin continues to be Bangladesh Coin for the purpose of Chapter XII notwithstanding that it has ceased to be used as money. *AIR 1926 All 321.*

(5) Murshidabad rupees having been stamped and issued by the authority of the Government of India or at least of the Government of the Presidency are Indian Coins within the meaning of the section even though they are no longer so used. *(1905) 2 CriLJ 395.*

(6) The mere fact that a coin is being used as an ornament by soldering a ring to it does not transform it absolutely into a new article. By removal of the ring the coin in a deformed state will

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1. Substituted for original paragraph by the Indian Penal Code Amendment Act, 1872 (Act XIX of 1872).
2. The word "Bangladesh" was substituted for the word "Pakistan" by Act VIII of 1973, 2nd Sch., w.e.f. 26-3-1971.
3. The words "of Pakistan" were omitted by Act VIII of 1973.
4. The word "Taka" was susbstituted for the word "rupees" by Act VIII of 1973, w.e.f. 26-3-1971.
5. Ins. by Act VI of 1896, s. 1 (2).
6. The original words "the Queen's Coin" have successively been amended by A.O. 1961 (with effect from 23rd March, 1956 and Act VIII of 1973 (with effect from 26th March, 1971) to read as above.

reappear and when these coins are tendered to a Bank they are not tendered as ornaments or other articles but as coins which have been deformed. *AIR 1926 All 321.*

Section 231

231. Counterfeiting coin.—Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Cases and Materials

1. Scope.—(1) This section should be read along with section 28 of this Code. The counterfeiting should be of 'coin' as defined in section 230 of the Penal Code in order to constitute an offence under section. The offence is complete although the coin may not be in a fit state to be uttered or the work may not be finished or perfected. This section applies equally whether the act of counterfeiting is complete or unfinished. Coin of the time of Akbar, not being 'coin' as defined in section 230, counterfeiting it is not offence. The opinion of the Mint Master to whom coins are sent for examination, that they are not genuine is not sufficient by itself in the absence of evidence by an expert before the Court *(1957 CrLJ 381).*

(2) In order to be counterfeit coins it is not necessary that they should be of exact resemblance of the genuine coins. So also it does not matter that they are not of the same material but are of some inferior material. It is sufficient that they are such as to cause deception and may be passed off as genuine coins. *AIR 1919 Pat 330.*

(3) The thing alleged to be counterfeit coin must have some such resemblance to a piece of genuine coin as to show that it was intended to resemble and pass for it though the imitation may be imperfect or the process incomplete. *(1907) 6 CriLJ 395 (All).*

(4) Where the edges of the coins were irregular and the glazing of the coins was not complete it was held that as none would be deceived by these coins they would not be counterfeit coins. *(1961) 2 CriLJ 472 (Guj).*

(5) Where it was alleged that the accused counterfeited coins and introduced them in the house of his enemy with the sole object that the latter should be thought to be the counterfeiter and be prosecuted accordingly it was held that the accused could not be said to have counterfeited coins. *AIR 1938 Nag 444.*

(6) One need not be an expert to find out a bad coin. Experience shows that many have the knack and capacity to mark it out readily even though the same is mixed up with good ones. *AIR 1957 Mys 24.*

(7) Offences connected with counterfeit coins are detected with great difficulty and call for a deterrent punishment. *AIR 1936 Nag 242.*

2. Practice.—Evidence—Prove: (1) That the metal is a coin.

(2) That the accused counterfeited it, or performed on it any part of the process of counterfeiting.

(3) That he did so knowingly.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of,—at—, counterfeited (or knowingly performed any part of the process of counterfeiting, to wit—), a coin, to—wit—and that you thereby committed an offence punishable under section 231 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 232

232. Counterfeiting [6][Bangladesh coin].—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting [6][Bangladesh coin], shall be punished with [7][imprisonment] for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Cases and Materials

1. Scope.—(1) This section makes counterfeiting of Bangladesh coins an offence. As the protection of the coin of the country is considered more essential, heavier penalty is provided herein for counterfeiting of Bangladesh coins. If coins are made to resemble genuine coins and they were intended for getting them to be secretly into the house of their enemies of the accused, the accused cannot be convicted for an offence under this section. To constitute the offence described in this section there must be an intention that the coins made will be used as Bangladesh coin or a knowledge that they are likely to be used as such.

(2) Offence under section 232 includes offence under section 235—Separate sentence, illegal. The offence described in section 235 of the Penal Code is included in the offence described in section 232, Penal Code and separate convictions and sentences under these two sections are improper and illegal. *1 PLD 179 Lah.*

(3) There can be no deception as contemplated by S. 28 and this section unless there is an intention on the part of the accused to use the counterfeit article as 'coin' or in other words to infringe the monopoly of the mint by the manufacture of false coins or to cause loss to the currency-owning public by the circulation of such coins. *AIR 1937 Mad 711.*

(4) Even if a person counterfeits an Indian coin which is not current at the time, he commits an offence under this section provided the intention to deceive or the knowledge of the likelihood of deception is there. Murshidabad rupees stand on the same footing as Farrukhabad rupees and counterfeiting of such coins will be an offence under this section. *(1905) 2 CriLJ 395 (All).*

(5) It is not an offence under this section to remove the rings of the coins which had been used as ornaments previously and to work up the face of the coins where the rings had been attached merely because by doing so the coin has been restored to its original form. *(1901) ILR 23 All 420 (422).*

(6) If the accused clips and cuts away a coin and makes up the deficiency by solder with the intention of subsequently delivering it to a bank he would be guilty of fraudulently defacing a coin. *AIR 1926 All 321.*

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7. Substituted by Ordinance No. XLI of 1985, for "transportation".

(7) Where the accused counterfeits Indian coins with the sole intention of using them to foist a false case against his enemy as being a counterfeiter, the intention is not to practise deception as understood in Section 28. *AIR 1937 Mad 711.*

(8) It is not incumbent on the Court, when a substantive term of imprisonment is awarded to the accused, to superadd any fine to that sentence. Where the accused was not a man of means and the imposition of fine could have only a nuisance value, it was held that an award of rigorous imprisonment would suffice. *1957 Ker LT 215.*

(9) Where the accused are charged under Section 235 for being in possession of implements and materials for counterfeiting coins and under S. 232 for actually counterfeiting coins, it has been held that the possession of the implements and materials is part and parcel of the transaction of counterfeiting coin and, therefore the passing of separate sentences under S. 235 is illegal. *AIR 1950 Lah 97.*

(10) Where the accused has been charged with making what he called Shah Alum coins it is the duty of the Magistrate to find whether the coins were coins or not. *(1908) 7 CriLJ 400 (Cal).*

(11) The question whether the coins were or were not used or intended to be used as money cannot be disposed of without the recording of evidence. *(1908) 7 CriLJ 400.*

2. Practice.—Evidence—Prove: (1) That the accused counterfeited or performed on it any part of the process of counterfeiting.

(2) That the thing counterfeited is Bangladesh coin.

(3) That the accused did so knowingly.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Chief Metropolitan Magistrate, District Magistrate, Additional District Magistrate specially empowered in that behalf.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, did counterfeit a piece of Bangladesh's coin, to wit—and that you thereby committed an offence punishable under section 232 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 233

233. Making or selling instrument for counterfeiting coin.—Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Cases and Materials

1. Scope.—(1) A collar of iron for grinning the edges of counterfeit money was held to be an instrument within the meaning of Statutes 8 and 9, Will. III, C. 26 although it was to be used in a coining press. *(1825) 172 ER 105.*

(2) On indictment for making mould intended to make and impress the figure and resemblance of the obverse side of a shilling, it was held sufficient to prove that the accused made the mould and a part of the impression though he had not completed the entire impression. *(1936) 173 ER 219.*

(3) The accused, with the intention of making counterfeit half dollars of Peru, procured dies for stamping the coins. He was, however, arrested before he could secure the metal and chemical preparations necessary for making the counterfeit coins. It was held that the procuring of the dies was an act in furtherance of the criminal purpose sufficiently proximate to the offence intended. *(1855) 25 LJ MC 17.*

(4) The accused went to a die-sinker and ordered him to make dies. the die-sinker informed the officers of the mint and the latter directed the die-sinker to execute the order of the accused. It was held that the accused could be held guilty as a principal offender for feloniously making a die which would impress the resemblance of the obverse side of a shilling. *(1844) 174 ER 818.*

(5) Where the accused was convicted and sentenced both under Sections 232 and 233, the conviction and sentence under Section 233 was set aside on the ground that what the accused really did was to make a counterfeit coin and not the instruments for making counterfeit coin, except incidentally as part of the process of making counterfeit coin. *1900 Pun LR 7, p. 14.*

2. Practice.—Evidence—Prove: (1) That the accused made, or mended, or performed some part of the process of making or mending the die or instrument, or that he bought, sold, or disposed of it.

(2) That he did so, for the purpose that such die or instrument might be used for the purpose of counterfeiting coin, or that he knew, or had reason to believe, that the same was intended to be used for such purpose.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by the Metropolitan Magistrate or Magistrate of the first or second class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That on or about—at—you made or (mended or performed any part of the process of making or mending) or (bought or sold) or disposed of a die of instrument used for counterfeiting coin, namely—and that you thereby committed an offence punishable under section 233 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 234

234. Making or selling instrument for counterfeiting [6][Bangladesh coin].—Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting [6][Bangladesh coin], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cases and Materials

1. Scope.—(1) When coin stamped with the puncheon in question resembled the shillings of the reign of King William III on the headside of the coin with no letters, it was held that the shillings of

the reign of King were current coin of the Kingdom though the letters were worn out and the puncheon came within the Statues 8 and 9 Will, III, C. 26. *(1778) 168 ER 197.*

(2) Where the instrument in question could not make a complete coin it was held that it could not be called a mould because it required something to be done to make it a mould. *(1843) 1 Cox C 41.*

2. Practice.—Evidence—Prove: (1) That the accused made or mended or performed some process of making or mending the die or instrument or that he bought, sold or disposed of it.

(2) That he did so for the purpose that such die or instrument might be used for the purpose of counterfeiting coin.

(3) That he did so knowing or having reason to believe that the same was intended to be used for such purpose.

(4) That the coin counterfeited is a Bangladesh coin.

3. Procedure.—Cognizable—Warrant—Not—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the day of—at—did make (or mend or perform) any part of the process of making or mending, to wit, or buy or sell or dispose of a certain die (or instrument) for the purpose of being used (or knowing or having reason to believe that it was intended to be used) for counterfeiting a piece of Bangladeshi coin, to wit and that you thereby committed an offence punishable under section 234 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 235

235. Possession of instrument or material for the purpose of using the same for counterfeiting coin.—Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

If [6][Bangladesh coin].—and, if the coin to be counterfeited is [6][Bangladesh coin], shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Cases and Materials : Synopsis

1. *Scope.*
2. *Possession, what constitutes.*
3. *"For the purpose of using the same...for that purpose".*
4. *Punishment.*
5. *Practice.*
6. *Procedure.*
7. *Charge.*

1. Scope.—The prosecution has to establish that the moulds were capable of producing a counterfeit coin, although broken moulds may be evidence of coining having previously taken place. It is incumbent upon the prosecution to prove not only the possession of the instrument or material but

also to prove that the possession was with the intention of using the same for the purpose of counterfeiting coin or with full knowledge and belief that it was intended to be used for that purpose. If the prosecution fails to prove the necessary intention knowledge or belief a person cannot be convicted under that section by a mere proof of physical possession of a instrument or material. Exclusive possession without access by other is necessary. Where a wife knows that certain implements were in the possession of her husband but that she was not in possession of them a conviction under this section may not stand. *(51 CriLJ 717).*

2. Possession, what constitutes.–(1) The possession contemplated by the section is voluntary and conscious possession. *(1904) 1 CriLJ 960.*

(2) To establish voluntarily and conscious possession there must be evidence of some circumstances indicating that the accused intended to exercise power or control over the object concerned or that he knew that he could do so at his will. *AIR 1919 Pat 330.*

(3) The indication that the accused intended to exercise power or control over an instrument or material may arise from the position of the instrument or material in the place which is constantly used by the accused person and which could not be overlooked by him or from the bulk of the object itself or from any circumstances such as the looking up of the thing which would point to voluntary or conscious possession. *AIR 1919 Pat 330.*

(4) If the articles found in a house or a room, the factors such as the length of possession or occupation of the house or room by the accused, the nature of occupation, accessibility to others are material. It is, however, not necessary that the accused should be the owner of the place where the things are found. *AIR 1950 All 732.*

(5) To prove that articles found in a house or room were in possession of accused it must be shown that the articles were there with his knowledge. *AIR 1915 Low Bur 64.*

(6) Where the articles were found in a box in a place which was accessible to the accused and some other persons and there was no other private belonging to the accused found in the box it was held that the accused could not be held to be in possession of the articles. *AIR 1935 Lah 39.*

(7) Where the moulds were found buried underneath an open verandah with a village pathway on the south and a road on the west it was held that the possibility of the articles having been surreptitiously introduced by a stranger could not be ruled out and that the accused could not be held to be in possession of the moulds. *AIR 1919 Pat 330.*

(8) The articles were recovered from a room which at the time of recovery, was coupled by the accused and his wife. The room had no internal connection with other parts of the house. The moulds, crucibles and bamboo tubes were found laying on the floor of the room. It was held that the room must be held to be in the exclusive possession of the accused, therefore, the accused must be held to be in possession of the articles. *AIR 1950 all 732.*

3. "For the purpose of using the same...for that purpose".—(1) Mere possession of instruments or materials capable of counterfeiting coins is no offence. It must further be proved that the possession was for the purpose of using the instruments or materials for counterfeiting coin or that the accused knew or had reason to believe that the instruments or materials were intended to be used for the purpose of counterfeiting coin. *AIR 1969 Delhi 315.*

(2) The purpose , intention or knowledge as to the use to be made of the articles in possession may be implied form the nature of the articles themselves. *(1904) 1 CrilJ 960.*

(3) The prosecution is bound to adduce evidence in the trial Court to show that the instruments with reference to which the charge is framed were capable of producing counterfeit coin. The prosecution cannot be allowed to supply the defect in the Court of appeal. *AIR 1969 Delhi 315.*

(4) Where the dies found with the accused were incapable of striking a competent coin it was held that it was not possible to infer that the accused intended to manufacture coins. *AIR 1925 Lah 22.*

(5) Where though the alleged counterfeit coins which had irregular edges could not pass off as genuine coins within the meaning of S. 28, it was held that they were materials which were in the process of being made into counterfeit coins and the case might fall within this section. *1961 (2) CriLJ 472 (Guj).*

(6) A person cannot be punished under this section on the ground that he had knowledge that someone else is in such possession. *AIR 1950 Lah 97.*

4. Punishment.—(1) Where there is no evidence to show that the instruments or materials in possession of the accused are for the purpose of counterfeiting coin the accused can be held guilty only under the first clause and not under the second clause. *(1958) 24 Cut LT 445.*

(2) The offence of counterfeiting coins and other offences connected with counterfeiting coins are very serious. *AIR 1930 Lah 514.*

(3) The offence of counterfeiting coins and other offences connected with counterfeiting coins are such as can be detected only with great difficulty. *AIR 1927 Lah 220.*

(4) Where accused convicted under this section was sentenced by the Magistrate to simple imprisonment for one year with a fine of Rs. 50 it was held that sentence was wholly inadequate. The sentence was enhanced to rigorous imprisonment for one year in addition to the simple imprisonment already undergone. *AIR 1927 Lah 220.*

(5) Where an accused is found guilty under this section. a sentence of imprisonment must be awarded. The sentence of fine can be awarded only in addition to the term of imprisonment. Where however a substantive term of imprisonment is awarded it is not incumbent on the court to superadd fine to the sentence of imprisonment. Where the accused was not known to be man of means and imposition of fine could have only a nuisance value it was held that the award of fine improper. *1957 Ker LT 215.*

(6) Where the accused is convicted and sentenced for being in possession of instruments or materials for counterfeiting he should not be convicted and sentenced for being in possession of such instruments or materials. *AIR 1930 Lah 51.*

(7) Separate sentence cannot be passed under Ss. 232 and 235 for counterfeiting coin and for being in possession of instruments used for counterfeiting such coin. The possession of the instruments or materials being part and parcel of the transaction of counterfeiting coin the sentence under S. 235 is illegal. *AIR 1950 Lah 97.*

(8) The Supreme Court in this case reduced a sentence of ten years to one of five years as the Court considered that the imprisonment for five years might be long enough for correctional purposes under the circumstances of the case. *AIR 1978 SC 480.*

5. Practice.—Evidence—Prove: (1) That the instrument or material in question is one for the purpose of counterfeiting coin.

(2) That the accused was in possession of such instrument or material in question.

(3) That he was in possession thereof for the purpose of using it or that he knew or had reason to believe that it was intended to be used for that purpose.

6. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class. If case falls under clause two, the case is triable by court of Sessions, Chief Metropolitan Magistrate, District Magistrate, Additional District Magistrate.

7. Charge.—The charge should run as follows:

I, (name and office of the Magistrate/Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at were in possession of a certain instrument (or material) to wit—for the purpose of using the said instrument for counterfeiting a piece of Bangladesh coin known as—(or knowing or having reason to believe that the said instrument was intended to be used for the purpose of counterfeiting, etc.) and thereby committed an offence punishable under section 235 of the Penal Code and within my cognizance.,

And I hereby direct that you be tried on the said charge.

Section 236

236. Abetting in [2][Bangladesh] the counterfeiting out of [2][Bangladesh] of coin.—Whoever, being within [2][Bangladesh], abets the counterfeiting of coin out of [2][Bangladesh] shall be punished in the same manner as if he abetted the counterfeiting of such coin within [2][Bangladesh].

Materials

1. Practice.—Evidence—Prove: (1) That the accused abetted the counterfeiting of coin.

(2) That the counterfeiting was outside Bangladesh.

(3) That the accused was in Bangladesh at the time of abetment.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

3. Charge. —The charge should run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—being Bangladesh abetted one XY residing out of Bangladesh at—in the counterfeiting of coin by doing—(mention the act done) and thereby committed an offence punishable under section 236 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 237

237. Import or export of counterfeit coin.—Whoever imports into [2][Bangladesh], or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine

Materials

1. Scope.—This section is directed against illicit traffic in counterfeiting of coins. If the import or export of counterfeit coins is with guilty knowledge the importer or exporter is punishable under this section.

2. Practice.—Evidence—Prove: (1) That the accused imported into or exported form Bangladesh some coins.

(2) That such coins were counterfeits coins.

(3) That the accused knew or had reason to believe that the coins were counterfeit.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—did import into or export from Bangladesh, viz, at—certain pieces of counterfeit coin, to wit—(specify the amount and name of the coins) knowing or having reason to believe that the said coins were counterfeit and that you thereby committed an offence punishable under section 237 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 238

238. Import or export of counterfeits of the [6][Bangladesh coin].—Whoever imports into [2][Bangladesh], or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of [6][Bangladesh coin], shall be punished with [7][imprisonment] for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Materials

1. Practice.—Evidence—Prove: (1) That the accused imported into or exported from Bangladesh coins.

(2) That such coins were counterfeit coins.

(3) That the accused then knew or had reason to believe that they were counterfeit coins.

(4) That the counterfeit coins were counterfeit Bangladesh coins.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

3. Charge.—The charge should run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—did import into or export from Bangladesh, viz, at—certain pieces of counterfeit Bangladesh coins, to wit—(specify the amount and name of coins) knowing or having reason to believe that the said coins were counterfeit, and that you thereby committed an offence punishable under section 238 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 239

239. Delivery of coin, possessed with knowledge that it is counterfeit.—Whoever, having any counterfeit coin which, at the time when he became possessed of it, he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Materials

1. Scope.—Three classes of offences are credited by sections 239 to 243. This section and section 240 deals with professional dealers in false coin who receive false coin and fraudulently pass it off as true coin. The object of the section is to penalise fraudulently circulation of base coins while the professional offender is punished lightly under section 241. Evidence of possession and the attempted disposal of coins of unusual kind is relevant on a charge of uttering such coins soon afterwards when the factum of uttering is denied.

2. Practice.—Evidence—Prove: (1) That the accused was in possession of coin.

(2) That which was counterfeit.

(3) That he knew it as counterfeit.

(4) That he delivered it to another or attempted to induce him to receive it.

(5) That the delivery was fraudulent or that fraud might be committed.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you on or about—at had pieces of counterfeit coin (or Bangladesh coin) namely—which at the time you possessed them, you knew to be counterfeit and which you fraudulently or (with the intent that fraud may be committed) delivered to A or (attempted to induce A to receive them) and you have thereby committed an offence punishable under section 239, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 240

240. Delivery of [6][Bangladesh coin] possessed with knowledge that it is counterfeit.—Whoever, having any counterfeit coin, which is a counterfeit of [6][Bangladesh coin], and which, at the time when he became possessed of it, he knew to be a counterfeit of [6][Bangladesh coin], fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Cases and Materials : Synopsis

1. Scope of the section.—(1) Before a man can be convicted under section 240, Penal Code it must be established that the accused fraudulently or with intent that fraud may be committed is in possession of counterfeit coin, and that he had knowledge at the time when he became possessed of it that it was a counterfeit coin. For a conviction under section 240 the point of time to be considered in connection with the offence is the time when the accused becomes possessed of the false coins and it has to be shown that at the particular time the accused knew that the coins were not genuine. This section does not apply to the actual coin.

(2) Where the offence charged consisted of selling sliver repuees as genuine gold mohur of the time of Shahajahan, it was held that a gold mohur of the reign of Shahajahan could not be deemed to be coin within the meaning of S. 230 as it was not used for the time being as money and that, therefore, no offence under S. 239 had been committed. *(1906) 4 CriLJ 453.*

2. "Which, at the time when he became possessed of it, he knew to be counterfeit."—(1) Under this section as well as under S. 239, the prosecution must establish that at the time when the accused came to possess the counterfeit coins he knew them to be counterfeit. *AIR 1955 NUC (ALL) 2662.*

(2) The knowledge of the accused, at the time he became possessed of the coins, that they were counterfeit is not necessary under S. 241 and the conviction can be altered to one under S 239 if the facts established fulfil the requirements of that section. *AIR 1936 Nag 242.*

(3) It is not always possible or necessary to prove the knowledge of the accused that the coins were counterfeit by positive evidence. The prosecution may bring out circumstances which may indicate or from which a reasonable presumption could be raised that the accused ought to have known at the time he became possessed of the coins that they were counterfeit. *1957 AllLJ 283(284).*

(4) Where the accused carried as many as 890 similar coins and had passed on 350 of them as genuine to three different persons, it was held that it could be safely presumed that the accused had the particular knowledge when he got possession of the coins. *AIR 1953 Pepsu 43.*

(5) No guilty knowledge can be inferred from mere possession of a small number of counterfeit coins by a person in the course of his business of giving small coins in exchange. *AIR 1955 NUC (All) 2662.*

(6) Sections 239 and 240 are not intended to apply to the coiner of the counterfeit coins. The words "which at the time when he became possessed of it, he knew to be counterfeit" point to a person other than the coiner that is to say, the person who procures or obtains or receives counterfeit coins. *1900 Pun LR 7 P. 14.*

3. "Fraudulently.....delivers the same.—(1) It is an essential element of the offence that the accused should have delivered the counterfeit coin fraudulently or with intent that fraud may be committed. *AIR 1955 NUC (All) 2662.*

(2) The giving of a piece of counterfeit money in charity has been held not to be an uttering within the meaning of Statute 2 Will IV C. 34. S. 7 although the accused may know it to be counterfeit as there is no intention to defraud in such a case. *(1837) 173 ER 425.*

4. Punishment.—(1) When a substantive term of imprisonment has been awarded it is not incumbent on the Court to supper any fine to that sentence. *1957 KerLT 215.*

(2) Where the accused is not a man of means and imposition of fine could have only a nuisance value and fine should not be imposed. *1957 KerLT 215*

(3) Where the articles seized from the house of the accused indicated that he had some knowledge of counterfeiting and his action in uttering them was of a deliberate nature the accused could not be dealt with leniently. *AIR 1936 Nag 242.*

(4) Where the accused was a young girl and there was the possibility of her having come under the influence of her father who was an utterer of counterfeit coins and had also some previous convictions to his credit, it was held that it would serve the ends of justice if the original sentence of three years' rigorous imprisonment was reduced to the period of two years already undergone. *1957 AllLJ 283.*

5. Procedure.—(1) It is not proper to join a charge under this section with a charge u/ss. 232 and 235. *1957 KerLT 215.*

(2) Offences under Ss. 230 and 240 are separate and distinct offences the latter deals with counterfeit of Bd. coins and the former with other counterfeit coins and separate convictions and sentence are permissible. *AIR 1933 Pesh 99.*

(3) A person having certain counterfeit coins in his possession but uttering only one of them cannot be separately convicted under S. 240 respecting the one coin and under S. 243 regarding the other coins in his possession because an offence under Section 240 implies prior guilty possession. *1957 AllLJ 283.*

(4) Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session, Chief Metropolitan Magistrate, District Magistrate, Additional District Magistrate.

6. Practice.—Evidence—Prove: (1) That the coin is a Bangladesh coin.

(2) That coin in question is counterfeit.

(3) That the accused became possessed of it.

(4) That he delivered to another or attempted to induce him to accept it.

(5) That he did so fraudulently or with the intention that the fraud may be committed.

7. Charge.—The charge should run as follows:

I, (name and office of the Judge/Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, having in your possession pieces of counterfeit Bangladesh's coin, known as—knowing at the time when you became possessed of the said coins that they were counterfeit, fraudulently (or with intent that fraud might be committed) delivered the same to one XY (or attempted to induce XY to receive the same), and thereby committed an offence punishable under section 240 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 241

241. Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.—Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin

which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration

A, a coiner, delivers counterfeit Company's [4][taka] to his accomplice B, for the purpose of uttering them. B sells the [4][taka] to C, another, utterer, who buys them knowing them to be counterfeit. C pays away the [4][taka] for goods to D, who receives them, not knowing them to be counterfeit. D after receiving the [4][taka], discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Cases and Materials

1. Scope.—(1) The delivery of counterfeit coin as genuine would be an offence under this section if the deliverer knew it to be a counterfeit coin at the time of such delivery although he did not know it to be counterfeit when he obtained possession of it. *AIR 1936 Nag 242.*

(2) Where a person tendered a coin to another and it was refused on the ground that it was a bad coin it was held that it might be presumed that after the other person refused the coin as bad the accused knew it to be counterfeit and has attempted to induce a second person to receive it as genuine constituted an offence under this section. *(1911) 12 CriLJ 79.*

(3) Where the uttering was not done under any stress of sudden temptation but was of a deliberate nature and the accused was a man of some status and he passed the counterfeit coins to others who were not so well off as he was, it was held that the matter could not be dealt with leniently especially as it was a kind of offence which it was difficult to detect. *AIR 1936 Nag 242.*

2. Practice.—Evidence—Prove: (1) That the coin in question is a counterfeit coin.

(2) That the accused delivered it, or so attempted to induce someone to receive it.

(3) That he so delivered it, or so attempted to induce someone to receive the same as genuine.

(4) That he, at the same time he delivered it, etc., knew the same to be a counterfeit coin.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, having in your possession—pieces of counterfeit Bangladesh's coin known as—delivered as genuine to one XY the said coins (or attempted to induce one XY to—receive the said coins as genuine) knowing at the time of the said delivery (or attempt), though not at the time when you became possessed of the said coins, that the said coins were counterfeit, and thereby committed an offence punishable under section 241 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 242

242. Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.—Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Cases and Materials

1. Scope.—(1) The possession of coins which are not current coin is no offence under this section. *(1880) 3 MysLR No. 225 P. 373.*

(2) This section should be read along with sections 25, 28 and 235 of the Penal Code. Mere possession of a counterfeit coin is an offence under this section but possession must be with intent to defraud. When pieces of counterfeit coin are found on one or two persons acting in guilty concert, and both knowing of the possession, both are guilty.

2. Practice.—Evidence—Prove: (1) That the accused was in possession of coin.

(2) That the coin was counterfeit.

(3) That he was in possession of it with intent to defraud or that fraud may be committed.

(4) That the time he came to possess them he knew them to be counterfeit.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—,at—, fraudulently (or with intention to defraud) were in possession of coins being counterfeit coins, knowing at the time when you became possessed of it they were counterfeit and thereby committed an offence punishable under section 242 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 243

243. Possession of [6][Bangladesh coin] by person who knew it to be counterfeit when he became possessed thereof.—Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of [6][Bangladesh coin], having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *"Fraudulently or with intent that fraud may be committed."*
3. *"Is in possession."*
4. *Counterfeit coin*
5. *"Having known at the time when he became possessed of it that it was counterfeit."*
6. *Punishment.*
7. *Procedure.*
8. *Practice.*
9. *Charge.*

1. Scope of the section.—(1) The term 'possession' as used in section 243 has to be interpreted in the light of sections 25, 27, 230 and 235. To establish possession under section 243 it is not sufficient to show that the object in question was in such a position that the accused had known it, might have exercised power or control over it, there must be evidence of some circumstances indicating that he intended to exercise power or control or that he knew that he could do so at will. Generally where counterfeit coins are found in a place which is in joint possession of several persons, no one, not even the head of the family can be convicted under this section, so long as there is no evidence to show that it was in his possession either exclusively or jointly with others *(AIR 1919 Pat 330).*

(3) The essential element of the offence under this section is that at the time the accused became possessed of a counterfeit coin, he knew it be counterfeit. *AIR 1917 Cal 123.*

2. "Fraudulently or with intent that fraud may be committed."—(1) Where the accused had tied the counterfeit coins separately in a handkerchief and taken them to the bazar on the market day to dispose them of and he had also complained that he had been receiving counterfeit coins from his customers, it was held these facts would show that the possession of the counterfeit coins was with intent to defraud people or with intent that fraud might be committed. *AIR 1943 Oudh 335.*

(2) Where eleven silver pieces of the size of a rupee along with thirty counterfeit rupees, all bearing the same year, were found concealed in a locked room the key of which was in the possession of the accused, it was held that the circumstances created a presumption under S. 114 of the Evidence Act that the accused was in possession of the coins fraudulently or with intent that fraud may be committed. *AIR 1933 Oudh 85.*

(3) Where, in the course of a search of house of the accused in connection with an offence under Ss. 457 and 330 of the Code counterfeit coins were recovered from the house but the defence of the accused was that the coins at one time belonged to an estate and were sold as a part of the property or the estate and were purchased by one M but the accused having half share in the purchase the coins came to his share and after the puchase it was not shown that any attempt was made by the accused to pass on the coins to other persons as genuine, it was held that from these facts the element that the accused was in possession of the counterfeit coins fraudulently or with intent that fraud may be committed was not proved. *AIR 1936 Pat 533.*

(4) Where the accused a tea vendor, was alleged to have been found in possession of 85 counterfeit four anna pieces but the coins were not made available for scrutiny by the High Court in appeal, the High Court acquitted the accused holding that the probability of the accused's innocent possession on of the coins during his business could be ruled out. *AIR 1969 Delhi 315.*

3. "Is in possession."—(1) One of the requirements of the section is that the accused must be in possession of the counterfeit coins. The possession must be voluntary or conscious possession. *(1904) 1 CriLJ 960 (963) (DB) (Bom).*

(2) The indication that the accused intended to exercise power or control over the coins may arise from the position of the coins in a place which is constantly used by the accused and which could not be overlooked by him or from the bulk of the coins themselves or from any circumstances such as the locking up of the thing which would point to the voluntary or conscious possession. *AIR 1936 All 650.*

(3) Where the counterfeit coins were found buried under an open verandah with a village path way on one side and road on the other side, it was held that there was the possibility of the coins having been placed thereby by some enemies of the accused and of the accused knowing nothing about them. *AIR 1919 Pat 330.*

(4) Where the coins were found concealed in a locked room the key of which was in possession of the accused it was held that the accused was in possession of the coins. *AIR 1933 Oudh 85.*

(5) Under Section 27 when property is in possession of a person's wife, clerk or servant on account of that person it is in that person's possession within the meaning of the Code. If there is prior authority to the servant or arrangement with him to receive the coin, the time when the servant receives the coin is the time when the master (the accused) becomes possessed of the coin. In other cases the time when the master comes to know or consents or allows the coins to remain with the servant is the time when he becomes possessed of them. *AIR 1917 Cal 123.*

4. Counterfeit coin.—(1) It is not essential that the counterfeit coins should exactly resemble genuine coins. It is sufficient that they are such as to cause deception and may be passed for genuine coins. *AIR 1919 Pat 330.*

(2) Where the evidence of the expert was that it was not possible to pass off the alleged counterfeit coins as genuine it was held that the accused could not be said to have committed an offence under this section. *AIR 1956 Bom 511.*

(3) Where the edges of the alleged counterfeit coins are irregular and none would be deceived by such coins they cannot be counterfeit coins within the meaning of S. 28 and this section will not apply. *1961 (2) CriLJ 472.*

5. "Having known at the time when he became possessed of it that it was counterfeit.—(1) It must be established that at the time the accused came into possession of the coin, he knew that it was a counterfeit coin. *AIR 1969 Delhi 315.*

(2) If a person comes into possession of counterfeit coins innocently he does not become liable to punishment under this section by his subsequent discovery that they are counterfeit coins and retention of them. *AIR 1950 Al 732.*

(3) The onus of proving that the accused knew at the time when he became possessed of the coins that they were counterfeit is on the prosecution. *AIR 1943 Oudh 335.*

(4) If the prosecution succeeds in establishing circumstances suggesting that the accused knew at the time he became possessed of the coins that they were counterfeit, then it is necessary for the accused to lead evidence to show that it was not at that time that he became aware of their counterfeit character. *AIR 1941 Pat 26.*

(5) Where the accused had tied the coins separately in a handkerchief and taken then to Bazar on the market day with the object of disposing them of and he had also complained that he had been receiving counterfeit coins form his customers, it was held that these facts could raise a reasonable presumption that the accused knew them to be counterfeit at the time when he became possessed of them. *AIR 1943 Oudh 335.*

(6) It was arranged between the accused and a police constable that the latter would go over to the former and take delivery of 400 pieces of counterfeit eight anna bits and pay Rs. 100/- in exchange . Shortly after the constable went to the place of the accused the police party entered the room of the accused and found 20 packets containing eight anna bits lying on the floor and the accused in the act of making over the possession of the counterfeit coins to the constable. It was held that the accused had committed an offence under this section but not under Section 240. *AIR 1955 NUC (Cal) 5566.*

(7) Under Section 27 of the Code when property is in the possession of a person's wife, clerk or servant on account of that person it is in that person's possession. The requirement of the knowledge at

the time the accused became possessed of the counterfeit coin is necessary for this mode of possession also. If there is prior authority to the servant or three is arrangement with him to receive the thing, the time when the servant receives the thing is the time when the master becomes possessed of the thing. In other cases the time when the master comes to know or consents or allows the thing to remain with the servant is the time when he becomes possessed of it. *AIR 1977 Cal 123.*

6. Punishment.—(1) Offence relating to counterfeiting of Bd. coins are serious offences and to award a punishment of two months' rigious imprisonment is not calculated to deter the offence from committing such offences. *(1875) 23 SuthWR 4.*

7. Procedure.—(1) A person having certain counterfeit coins in his possession but uttering only one of them cannot be separately convicted under S. 240 respecting the coin which is uttered and under S. 243 regarding the other coins remaining in his possession because an offence under S. 240 implies prior guilty knowledge. The conviction having been obtained under S. 240, the guilty possession should not have been made a distinct crime under S. 243. *1957 AllLJ 283(284).*

(2) Where one A who was in possession of some counterfeit coins gave some out of them to B and A was tried and convicted under Sections 243 for the coins in his possession and subsequently tried under Section 240 in respect of the coins that he gave to B, it was held that the delivery of the counterfeit coins to B was a distinct offence from that for which A was previously convicted. It was further held that B could be jointly tried with A for abetting an offence u/s. 240. *(1904) 1 CriLJ 714 (Cal).*

(3) Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

8. Practice.—Evidence—Prove: (1) That the accused was in possession of Bangladesh coin.

(2) That the Bangladesh coin was counterfeit.

(3) That he was in possession of it with intent to defraud or with intent that fraud may be committed.

(4) That he knew that it was counterfeit at the time he became possessed of it.

9. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the day of—at—fraudulently (or with intent that fraud might be committed were in possession of pieces of counterfeit Bangladeshi coins, known as knowing at the time when you became possessed of the said coins that they were counterfeit, and thereby committed an offence punishable under section 243 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 244

244. Person employed in mint causing coin to be of different weight or composition from that fixed by law.—Whoever, being employed in any mint lawfully established in [2][Bangladesh], does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished

with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Materials

Practice—Evidence—Prove: (1) That the accused is employed in a lawfully established mint in Bangladesh.

(2) That he during such employment, did or omitted to do, something which he was legally bound to do, which would cause any coin issued from that mint to be different weight or composition from that fixed by law.

(3) That he did or omitted to do such things with that intention.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—being employed as in the mint lawfully established in Bangladesh, did an act, to wit—(or omitted what were legally bound to do, to wit(, with the intention of causing the coin issued form the said mint to be of a different weight or composition from the weight or composition fixed by law, and thereby committed an offence punishable under section 244 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 245

245. Unlawfully taking coining instrument from mint.—Whoever, without lawful authority, takes out of any mint, lawfully established in [2][Bangladesh], any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Materials

1. Practice.—Evidence—Prove: (1) That the instrument in question is a coining tool or instrument.

(2) That it belongs to mint lawfully established in Bangladesh.

(3) That the accused took it out it of the mint without lawful authority.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—without lawful authority did take out of a mint lawful established in Bangladesh to wit, the mint—a certain coining tool or instrument to wit—and thereby committed an offence punishable under section 245 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 246

246. Fraudulently or dishonestly diminishing weight or altering composition of coin.—Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

Materials

1. Practice.—Evidence—Prove: (1) That the metal in question is a coin.

(2) That the accused performed upon such coin the operation in question.

(3) That the accused did as above fraudulently or dishonestly.

(4) That such operation diminished its weight, or altered its composition.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

3. Charge—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—fraudulently (or dishonestly performed on the coin, to wit—, an operation which diminished its weight or altered its composition), and you thereby committed an offence punishable under section 246 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 247

247. Fraudulently or dishonestly diminishing weight or altering composition of [6][Bangladesh coin].—Whoever fraudulently or dishonestly performs on [8][any Bangladesh coin], any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cases and Materials

1. Scope.—(1) The mere fact that an Bd. coin is being used as an ornament by soldering a ring to it does not transform it absolutely into a new article. If a person clips and cuts away such a coin and makes up the deficient weight by solder with the intention of subsequently delivering it to a bank he would be guilty of fraudulently defacing a coin even though on a previous occasion the coin has been used as an ornament. *AIR 1926 All 321.*

2. Practice.—Evidence—Prove: (1) That the accused performed an operation.

(2) That the operation was made on Bangladesh coin.

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8. The original words "any of the Queen's coin" have been successively amended by A.O. 1961 (with effect from 23rd March, 1956) and Act VIII of 1973 (with effect from the 26th March, 1971) to read as above.

(3) That it was made fraudulently.

(4) That such operation diminished its weight and altered its composition.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at— fraudulently (or dishonestly) performed on any Bangladesh coin namely—an operation which diminished its weight or altered its composition and that you have thereby committed an offence punishable under section 247 of the Penal code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 248

248. Altering appearance of coin with intent that it shall pass as coin of different description.—Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Materials

1. Practice.—Evidence—Prove: (1) That the metal in question is a coin.

(2) That the accused performed on such coin the operation in question.

(3) That such operation altered the appearance thereof.

(4) That the accused did as above with the intention that such coin should pass as a coin of different description.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day—at—performed an operation on the coin namely—which altered its appearance with the intention that the said coin shall pass as a coin of different description and you thereby committed an offence punishable under section 248 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 249

249. Altering appearance of [6][Bangladesh coin] with intent that it shall pass as coin of different description.—Whoever performs on [8][any Bangladesh coin] any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Materials

1. Practice.—Evidence—Prove: (1) That the accused performed an operation on Bangladesh coin.

(2) That the operation altered its appearance.

(3) That the accused did so with the intention that the coin should pass off as a coin of different description.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That on or about—at—you performed an operation on a Bangladesh coin namely—which altered the appearance of the said coin with the intention that the said coin shall pass off as coin of different description and you thereby committed an offence punishable under section 249 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 250

250. Delivery of coin, possessed with knowledge that it is altered.—Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Materials

1. Practice.—Evidence—Prove: (1) That the coin in question was one with respect to which the offence defined in section 246 or 248 was committed.

(2) That the accused was in possession of it.

(3) That at the time when he became possessed of it he knew that any of the said offences had been committed.

(4) That he delivered it to someone, or attempted to induce someone to receive it.

(5) That he did as above with intent to defraud or with intent that fraud might be committed.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable–Triable by Metropolitan Magistrate or Magistrate of the first or second class.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That on or about—at—you had in possession a coin namely—with respect to which an offence under section 246 or section 248 of the Penal Code had been committed and at the time you came in possession you knew that such offence under section 246 or 248 had been committed and having known at the time when you came to possess the said coin that such offence had been committed with respect to it fraudulently or with intent that fraud may be committed, delivered such coin to A, or attempted to induce the said A to receive the same and thereby committed an offence punishable under section 250 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 251

251. Delivery of [6][Bangladesh coin], possessed with knowledge that it is altered.—Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Cases and Materials

1. Scope.—(1) To sustain a conviction under this section the prosecution must establish: that the accused had delivered a coin with respect to which the offence defined in S. 247 or S. 249 had been committed, to some person or attempted to induce such person to receive the same, either fraudulently or with intent that fraud may be committed. *(1903) 8 MCCR No. 325, P. 277.*

(2) If an accused person clips and cuts away a coin used as an ornament by soldering a ring to it and makes up the deficiency in weight by solder with the intention of subsequently delivering it to a bank, he would be guilty of fraudulently defecting a coin although on a previous occasion the coin had been used as an ornament. *AIR 1926 All 321.*

(3) The sentence of fine is optional. The law does not require a sentence of fine as well as of imprisonment. *1 Weir 223.*

2. Practice.—Evidence—Prove: (1) That the coin in question was one with respect to which the offence defined in section 247 or 249 was committed.

(2) That the coin in question was a Bangladesh coin.

(3) That the accused was in possession of it.

(4) That at the time he came into possession he knew that the offence under section 247 or section 249 had been committed.

(5) That he delivered it to another or attempted to induce him to receive it.

(6) That he did so with intent to defraud or that fraud might be committed.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session, Chief Metropolitan Magistrate, District Magistrate or Additional District Magistrate specially empowered in this behalf.

4. Charge.—The charge should run as follows:

I, (name and office of the Judge/Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—had in your possession a coin namely—and in respect of which the offence defined in section 246 or section 248 Penal Code had been committed, and knowing at the time when you became possessed of the said coin that such offence had been committed, you fraudulently or with intent that fraud may be committed delivered such coin to XY (or attempted to induce the said XY to receive the same) and thereby committed an offence punishable under section 251 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 252

252. Possession of coin by person who knew it to be altered when he became possessed thereof.—Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Materials

1. Practice.—Evidence—Prove: (1) That the accused was in possession of a coin.

(2) That it was a coin in respect of which the offence defined in section 246 had been committed.

(3) That the accused knew of it when he became possession of the coin.

(4) That he was so possessed of the coin with intent to defraud, or with intent that fraud might be committed.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about—at—had in your possession a coin namely—with respect to which the offence defined in section 246 or 248 had been committed having known at the time of becoming possessed of it that such offence had been committed and thereby committed an offence punishable under section 252 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 253

253. Possession of [6][Bangladesh coin] by person who knew it to be altered when he became possessed thereof.—Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the

time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Materials

1. Practice.—Evidence—Prove: (1) That the accused was in possession of Bangladesh coin.

(2) That it was in respect of which the offence under section 247 or 249 had been committed.

(3) That the accused knew of it when he became possessed of it.

(4) That he possessed the Bangladesh coin with intent to defraud or with the intent that fraud might be committed.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about—at—had in your possession Bangladesh coin namely—and in respect of which the offence defined in section 247 or 249 had been committed having known at the time of becoming possessed of it that such offence had been committed with respect to such Bangladesh coin and thereby committed an offence punishable under section 253, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 254

254. Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.—Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248, or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

Materials

1. Practice.—*Evidence*—Prove: (1) That the coin in question is one with respect to which any such operation as that mentioned in sections 246, 247, 248 or 249 has been performed.

(2) That the accused delivered it to someone, or that he attempted to induce someone to receive it.

(3) That he delivered it, or so attempted to induce someone to receive it, as a genuine coin, or as a coin of a different description.

(4) That at the time he did so he knew that it had been operated upon.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by any Magistrate.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—delivered to XY (or attempted to induce XY to receive) as genuine a coin, namely—in respect of which an operation as is mentioned in sections 246, 247, 248 or 249 of the Penal Code to wit had been performed, and you thereby committed an offence punishable under section 254 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 255

255. Counterfeiting Government stamp.—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with [7][imprisonment] for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Cases and Materials

1. Scope.—(1) Sections 255 to 263A, Penal Code deal with offences relating to stamps issued by the Government. This section deals with counterfeiting of Government stamps. Stamp is an impression by means of a die upon paper, or other material in token or the payment of a certain charge or tax mostly for the purpose of revenue. This section may be read along with section 28 and section 17, Penal Code.

(2) Term "prejudicial act" in section 2(4) of the Public Safety Act does not cover the definition of the term "prejudicial act" under section 2(f) (viii) of the Special Powers Act (XIV of 1974), section 26 (3)—On 5-2-74 when the offence was detected the accused could not be tried for an offence which falls under section 16(3) of the Special Powers Act, since the S. P. Act became law on 9-2-74 there being given no retrospective effect with regard to the operation of the provisions of the Act. Retrospective operation of a penal statue—unless a penal law is given retrospective effect no offence committed before law came into force can be tried under that statute. The appellants were found in possession of forged and counterfeit non-judicial stamps on 5-2-74. The evidence collected by the police made out a prima facie case for submission of charge-sheet under sections 255, 256, 258 and 259 of the Penal Code. But the police could not invoke section 16(3) of the Act when the Act was not in existence on 5-2-74 the date of commission of the offence and the Act was not given any retrospective effect. Criminal trial—of the CrPC it cannot be tried under a Special Act which came into effect after the commission of the offence. Forum for trial must be one as provided by the CrPC. *30 DLR 112 (SC).*

(3) Where the accused engraved a counterfeit stamp, like in some parts, a genuine stamp and unlike in other parts and then cut out the unlike parts and concealed the parts cut out, he was held guilty of counterfeiting stamp. *(1812) 168 ER 620.*

(4) Where the accused altered some used stamps so as to make them resemble unused ones, it was held that the alteration amounted to counterfeiting within the meaning of Section 28 of the Code. *AIR 1921 Nag 86.*

(5) A forged stamp was held to be a stamp within the meaning of Section 13 of the Stamp Duties Management Act, 1891 (54 and 55 Vict, C 38) even though it bore the cancellation mark. *(1914) 1 KB 144.*

(6) Where a one anna stamp paper had been used instead of one rupee stamp paper and on the two Bangali letters of the word 'anna' semi opaque blots of ink had been dropped but there had not been the slightest attempt made to alter the word 'anna' into 'roopya' and the word 'anna' in the Persian character was perfectly intact it was held that there was no counterfeiting. *(1865) 2 SuthWR 65.*

(7) Under S. 17 of the Post Office Act, 1898 postage stamp and impression of stamping machine issued under this authority of Government and denoting pre-payment of postage are deemed to be stamps issued by Government for the purpose of revenue within the meaning of this Code. *(1892) 5 CPLR 43.*

2. Practice.—Evidence—Prove: (1) That the counterfeit was that of a stamp issued by Government for the purpose of revenue.

(2) That the accused made such counterfeit or that he knowingly 'performed' any part of the process of counterfeiting.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Chief Metropolitan Magistrate, District Magistrate or Additional District Magistrate specially empowered.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—counterfeited (or knowingly performed a certain part of the process of counterfeiting, to wit—) a certain stamp issued by Government for the purpose of revenue to wit and thereby committed an offence punishable under section 255 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 256

256. Having possession of instrument or material for counterfeiting Government stamp.—Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cases and Materials

1. Scope.—(1) This section may be read along with sections 27 and 235. this section deals with possession of instrument or material for counterfeiting of stem corresponding section 235 of the Penal Code dealing with coin.

(2) Even an innocent possession of a die for making a false stamp known to be such by its possessor is an offence. *(1896) 2 QBD 310.*

2. Practice.—Evidence—Prove: (1) That the instrument or material in question is one usable for counterfeiting stamps.

(2) That the stamps so predicable thereby are counterfeits of those issued by Government for the purpose of revenue.

(3) That the accused had such instrument or material in his possession.

(4) That the same was in possession of the accused for the purpose of its being used to counterfeit such Government stamps; or that the accused knew or had reason to believe that such instrument or material was intended to be used.

3. Procedure—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about—at—had in your possession instruments or materials for the purpose of being used or knowing or having reason to believe that it is intended to be used for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue and thereby committed an offence punishable under section 256 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 257

257. Making or selling instrument for counterfeiting Government stamp.—Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Materials

1. Practice.—(1) Evidence—Prove: (1) That the instrument or material in question is one usable for counterfeiting stamps.

(2) That the stamps so predicable thereby are counterfeits of those issued by Government for the purpose of revenue.

(3) That the accused made, or perform, some part of the process of making such instrument, or that he bought, sold or disposed of such instrument.

(4) That he did as above in order that such instrument might be used for purpose of counterfeiting such stamp or that the accused knew or had reason to believe that the same was intended to be used for such purpose.

2. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about—at—made (or performed any part of the process of making or bought or sold disposed of) any instrument namely—for the purpose of being used (or knowing or having reason to be believed that it was intended to be issued) for counterfeiting a stamp namely—issued by Government for the purpose of revenue, and thereby committed an offence punishable under section 257 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 258

258. Sale of counterfeit Government stamp.—Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cases and Materials

1. Scope.—(1) Investigation by Anti-Corruption authority thought not authorised under the law does neither deprive the Court of its jurisdiction to hold trial nor vitiate the trial for want of jurisdiction in the investigation officer, District Anti-Corruption Officer, Bakerganj on a certain information visited the stall of the accused, licensed stamp vendor, and recovered 61 suspected one rupee denomination court-fee stamps from his file and thereafter lodged F.I.R. with Kotwali P.S. and directed the assistant Inspector of the Anti-Corruption Bureau to investigate into the case. The investigation was done by him in accordance with the provisions of Cr. P. C. He submitted charge-sheet against the accused who was found guilty under sections 258 and 259, P. C. and was sentenced to three years' R.I. On appeal it was contended that the trial of the accused was illegal because of the investigation into the case by an officer of the Anti-Corruption Bureau who had no authority to investigate into the case and as such this illegal investigation conferred no jurisdiction on the trial court. Held:There is no doubt that court which took cognizance of the offence suffered from no jurisdictional defect or want of jurisdictional authority in trying the accused because of the irregular investigation and collection of evidence against him by an authority who may not have been authorised to do so. Before we part with this case we would like to observe that since the legislature has not empowered specifically the Bureau of Anti-Corruption to investigate and enquire into offences which was deliberately kept out of the Schedule to the Anti-Corruption Act of 1957, it was no function of the members of the Anti-Corruption Bureau to have investigated into the case. *Abdul Karim Howladar Vs. The State, (1969) 21 DLR 871.*

(2) Under Section 13 of the Stamp Duties Management Act, 1891 (54 and 55 Vict C 38 a forged stamp has been held to be a stamp even though it bears a cancellation mark. *(1914) 1 KB 144.*

2. Practice.—Evidence—Prove: (1) That the counterfeit was that of a stamp issued by Government for the purpose of revenue.

(2) That the accused sold or offered to sell such counterfeit stamp.

(3) That when selling or offering the same for sale he knew or had reason to believe that the same was counterfeit.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—sold (offered for sale) a stamp to wit—which you knew (or had reason to believe) to be counterfeit of the stamp—issued by the Government for the purpose of revenue and thereby committed an offence punishable under section 258 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 259

259. Having possession of counterfeit Government stamp.—Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Materials

1. Scope.—(1) This section deals with possession of counterfeit stamps corresponding to section 243 relating to coin. Mere possession of counterfeit stamp is no offence under the Code, but if he possesses it with the intention of using it or disposing it of as genuine, this section is attracted.

2. Practice.—Evidence—Prove: (1) That the counterfeit was that of a stamp issued by Government for the purpose of revenue.

(2) That the accused had such counterfeit stamp in his possession.

(3) That he then knew the same to be counterfeit.

(4) That he was so possessed intending to use or dispose of the same as a genuine stamp, or that he was so possessed thereof in order that the same may be used as a genuine stamp.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, were in possession of a stamp Exhibit—, which you knew to be a counterfeit of a stamp to wit—, issued by Government for the purpose of revenue, intending to use (or dispose of) the same as genuine stamp and thereby committed an offence punishable under section 159 the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 260

260. Using as genuine a Government stamp known to be counterfeit.—Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with

imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) This section corresponds to section 154, a similar section relating to coin. Stamp used as genuine must be a counterfeit stamp.

(2) Where a person altered some used stamps so as to make them resemble unused ones and used them as unused, it was held that the alteration amounted to counterfeiting within the meaning of Sec. 28 of the Code. *AIR 1921 Nag 86.*

(3) Where a person used a genuine one anna stamp for a rupee stamp and on the two Bangla letters of the word 'anna' semi opaque blots of ink had been dropped but there had been no attempt made to alter the word 'anna' into 'roopya' and the word 'anna' in the Persian character was kept perfectly intact, it was held that the accused could not be held guilty under this section. *(1865) 2 SuthWR 65.*

2. Practice.—Evidence—Prove: (1) That the counterfeit was that of a stamp issued by Government for the purpose of revenue.

(2) That the accused knew the same to be counterfeit.

(3) That he used counterfeit stamp with such knowledge.

(4) That he used same as a genuine stamp.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—, used as genuine a stamp to wit—knowing to be a counterfeit of a stamp issued by Government for the purpose of revenue, to wit—and thereby committed an offence punishable under section 260 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 261

261. Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.—Whoever fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Materials

1. Practice.—Evidence—Prove: (1) That the stamp was issued by Government for revenue purpose.

(2) That such stamp had been used as such on the substance in question.

(3) That the accused removed or effaced from such stamp some of the writing for which it had been used.

(4) That he did so with intent to defraud or to cause loss to Government.

2. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, fraudulently (or with intent to cause loss to the Government) removed or effaced from any substance bearing any stamp issued by Government for the purpose of revenue any writing or document for which such stamp has been used or removed from any writing or document a stamp which had been used for such writing or document in order that such stamp may be used for different writing or document and thereby committed an offence punishable under section 261 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 262

262. Using Government stamp known to have been before used.—Whoever fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) Offence complete no sooner the document is filed—Recipient not within the mischief of the section and cannot be charged for abetting. The user of used-up stamp in Court as contemplated under section 262 is complete as soon as the document is filed before the Court, and at that stage the Officer of the Court whose duty is to receive the documents has nothing whatever to do with it. In this view of the matter, so far as that offence is concerned which is completed with the filing of the document, there is no unity of criminal behaviour as between the person filling that document and the person responsible for accepting it, punching it, sealing it and then entering into a register. *Abdul Latif Mridha Vs. Crown 8 DLR 238.*

(2) Under the section it is incumbent upon the prosecution to bring home to the accused not only that he used the stamp with knowledge that it had been used before but also that he used it fraudulently or with intent to cause loss to the Government. The intent to defraud or to cause such loss cannot be assumed. *1981 All WN 56.*

(3) A person is punishable under this section for using a postage stamp twice. *(1892) 5 CPLR 43.*

2. Practice.—Evidence—Prove: (1) That the stamp was issued by Government for the purpose of revenue.

(2) That it had been already used for such purpose.

(3) That the accused afterwards again used such stamp.

(4) That when he used it again he knew that it had been before used.

(5) That he again so used the stamp with intent to defraud or to cause loss to Government.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

4. Criminal trial.—Offence—several persons charged for the commission of an offence read with section 34, Penal Code. Acquittal of one does not preclude the remaining being convicted of the substantive offence.

Section 263

263. Erasure of mark denoting that stamp has been used.—Whoever fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) Under this section three things are punishable: (i) erasure or removal of a mark denoting that a stamp has been used, (ii) knowingly possessing any stamp, and (iii) selling or disposing of any such stamp.

(2)—(a) Disorderly behaviour menacing in nature, causing annoyance to passengers in the street, whether constitutes offence under section 79 of the Chittagong Metropolitan Police Ordinance, 1978 as it was done in a hut, and not in the open street. Effect of the act upon the passengers or public peace is the main ingredient of the offence whether the act was done in a hut or in the street.

(b) Whether the sentence of imprisonment in default of payment of fine under section 79 of the Ordinance is legal. Section 33(1) of the Code of Criminal Procedure governs both the case where the offence is punishable with imprisonment as well as fine and where the offence is punishable only with fine. *The State Vs. Abul Kashem 5 BCR 265 AD.*

(3) There is no necessity under this part of the section for the prosecution to prove that the erasure of the mark or impression had been done by the accused or that he had any connection with it. *(1936) 37 CriLJ 923 (Cal).*

(4) The endorsements put upon a stamp by a stamp vendor are not put for the purpose of showing that it has been used and hence erasement of such endorsement of the stamp and its possession do not come within the purview of this section. *(1936) 37 CriLJ 923 (Cal)*

(5) In a case where accused were charge-sheeted under Ss. 262, 263 and also under Ss. 120B, 467, 471, P.C. if there is no sanction to prosecute u/s. 195, Cr. P. C. the Court cannot proceed with the case u/ss 120B, 467, 471, but as offences under Ss. 262, 263 are quite different from those under Ss. 463, 471 and do not need any sanction to prosecute Court can proceed with the case with respect to those offences only. *1980 All CriR 76.*

2. Practice.—*(a) In case of erasing or removing marks*—Prove: (1) That the stamp in question was issued by the Government for the purpose of revenue.

(2) That it bore the mark that it been used.

(3) That the accused removed or erased such mark or impression.

(4) That he did so with the intention to defraud or cause loss to the Government.

(b) In case of sale or disposal—prove: (1) That the stamp in question was issued by the Government for the purpose of revenue.

(2) That it bore the mark or impression showing that it had been used.

(3) That the accused removed or erased such mark or impression.

(4) That the accused was in possession of such stamp then in such condition.

(5) That he knew at that time such mark or impression and had been removed or erased.

(c) In case of sale or disposal—Prove: (1) That the stamp in question was issued by Government for the purpose of raising revenue.

(2) That it bore the mark that it had been used.

(3) That the accused removed the stamp.

(4) That the accused sold or disposed of such stamp.

(5) That he then knew it had been so used.

(6) That he sold or disposed of such stamp with intent to defraud or cause loss to government.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—at—fraudulently or with the intent to cause loss to Government erased or removed from a stamp issued by the Government for the purpose of revenue, a mark put or impressed upon such stamp for denoting that the same had been used or possessing it knowing at that time that such mark or impression had been removed or erased (or you sold or disposed of such stamp knowing that the mark or impression in the stamp had been removed or erased with a fraudulent intention or had the intention to cause loss to Government when so selling or disposing of it) and thereby committed an offence punishable under section 263 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 263A

[9][**263A. Prohibition of fictitious stamps.**—(1) Whoever—

(a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred [4][taka].

9. S. 263A was inserted by the Indian Criminal Law Amendment Act, 1895 (III of 1895), s. 2.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any *facsimile* or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263 both inclusive, the word "Government" when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorised by law to administer executive government in any part of [2][Bangladesh], and also in any part of Her Majesty's dominions or in any foreign country.

Cases and Materials

1. Scope.—(1) This section was added by Act III of 1895 in consequence of the resolution of the International Postal Congress held at Vienna in 1891. This section deals with sale of any fictitious stamp or use of such stamp for postal purposes.

(2) Possession of die for making false stamp known to be such to its possessor held to be an offence under S. 7(c) of Post Office (Protection) Act, 1884 (47 and 48 Vict. C. 76). *(1886) 2 QBD 310.*

(3) In the Penal Code there are about 15 offences, such as u/ss 263A, 283, 290, 294A which are punishable only with fine, but in none of these sections it is provided that the offender should be committed to prison in default of payment of the fine—Courts while sentencing a person to fine under these sections pass sentence of imprisonment in default of payment of the fine since this power is already there u/ss. 31(1) & 33(1) Cr. P.C.—There is no illegality in the Magistrate's order in the case sentencing the appellant to simple imprisonment in default of the fine. *The State Vs. Abdul Kashem 4 BSCD 37.*

2. Practice.—Evidence—Prove: (1) That the accused made, knowingly uttered, dealt in or sold the fictitious stamp in question, or knowingly used it for any postal purpose.

(2) That he had in his possession, without lawful excuse, such stamp.

(3) That he made or without lawful excuse had in his possession any die, plate instrument or material for making such stamp.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—at—, made, knowingly altered, dealt in or sold fictitious stamps (or knowingly used for any postal purposes any fictitious stamp) or had in your possession without lawful excuse any fictitious stamp or made or had in your possession any die, plate instrument or materials for making any fictitious stamp and thereby committed an offence punishable under section 263A of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

CHAPTER XIII
Of Offences relating to Weights and Measures

Chapter introduction.—*This Chapter does not require for its working any fixed and immutable standard of weights and measures. It is sufficient for the purpose of the Chapter that the weights and measures current in a locality should be fraudulently deviated from. The offence, in short, consists in the fraud practised by making a person believe that a weight or measure is what in reality it is not. The offence consists in cheating by using false weights and measures which carry with them the resemblance of public authenticity.*

The offences of using false tokens, whether they be false coins, false stamps, false weights and measures or false trade-marks, are all parts of the generic offence of cheating against which extensive provisions have been made by the municipalities and local boards for regulating the weights and measures and for verifying and stamping them. In such cases, the use of unauthorized weights and measures is also prohibited and punished. But, whether it is a charge for using unauthorized weights and measures, or for an offence under any section of this Chapter, the underlying principle is the same, only in the one case cheating is apprehended, in the other case it is to be proved. A police officer in charge of a police station possesses the power to inspect or search for any weights and measures which he has reason to believe to be false and, if they are so found, to seize them. (Section 153, Cr.P.C.).

In Bangladesh as part of the Indian Subcontinent, the standards of weights and lengths were laid down in the (a) the Weights and Measures of Capacity Act, 1871 (XXXI of 1871), (b) the Measures of Length Act, 1889 (II of 1889), and (c) the Standards of Weight Act, 1939 (IX of 1939). There were used certain terms for standards of weights and lengths being seer, pound, yard and their multiples and sub-multiples. These standards, however, were not effectively enforced throughout the country with the result that different systems of lengths and measures prevailed in different parts of the country. Moreover, the same term often represented different units of weight in different areas and in different trades within the same area. This state of chaos hampered trade and provided opportunity for the exploitation of the masses. As such, an urgent need was felt for enforcing a uniform system of weights and measures throughout the country. After prolonged consideration it was felt that the best course was to adopt a uniform system of weights and measures based on the metric system, a system which had already been adopted by nearly 70 countries and was recognised throughout the world. The Government consequently passed an Act namely, the Weights and Measures (Metric System) Act, 1967 (V of 1967), fixing the primary unit of length as a metre and the primary unit of mass as a kilogram, apart from fixing units of time, electric current, scale

of temperature, luminous intensity, area, volume and capacity. The standards established by the Act were based on the international system of units, as recognised by the General Conference of Weights and Measures (CGPM) and the International Organization of Legal Metrology (OIML). Subsequent to the enactment of the said Act, CGPM revised the standards of weights and measures with a view to providing a coherent scheme for measurements having regard to the rapid advances made in the fields of science and technology, and evolved a practical system of units of weights and measures, suitable for adoption for all the signatories to the Metre Convention. This practical system of weights and measures was given the name "Le Systeme International d' Unites" (with its international abbreviation "SI"). The "SI" includes seven base units, two supplementary units, about fifty derived units and a few special units. The "SI" is not a new system, it emanates from the six primary units which were established by the said Act and also includes derived units which are required in the specialised fields of nuclear science, space technology, aeronautics, electronics, communication and for the manufacture of high-precision instruments and equipments required in the country and for export. To sustain and assist scientific and technological research in the country, more accurate standards of weights and measures, as in the "SI", had to be adopted for the measurement of space and time, temperature and heat, magnetic quantities, X-ray dosage, nuclear radiation, etc. The scientific and technological organizations, urged the formal adoption of "SI" and other units to facilitate their working.

The OIML, which is responsible for the preparation of international laws on weights and measures, called "Legal Metrology", has recognised all the "SI" units for legal purposes and has prepared the draft of a legislation for enactment by member-countries.

Bangladesh is a signatory to the Metre Convention and is thus a member of the CGPM. Bangladesh is also a member of the OIML. In view of the revision by the CGPM of the Standards of Weights and Measures and the changes in the law suggested by the OIML, the Government was to consider what changes were required to be made in the said Act to give effect to the recommendations made by the aforesaid International Organizations.

While many countries of the world, including our neighbours India, Pakistan and Sri Lanka had in their march forward, adopted metric system of weights and measures, a system universally acclaimed as simple, scientific and highly efficient in economic activities especially industrial production and trade and commerce—we were labouring under an unscientific and outmoded indigenous system of weights and measures. The law on metric system, called the Standards of Weights and Measures Act, 1969, which we had inherited from erstwhile Pakistan had also not, in view of the dimension of the progress since made in the system internationally, been considered suitable for adoption in this country. The Government, therefore, sought to make suitable provision for introduction of metric system of weights and measures so that this country might keep pace with other countries in the march forward in the field of weights and measures.

As a result, the Standards of Weights and Measures Ordinance, 1982 (Ord. No. XII of 1982), has been made and promulgated. Under this Ordinance, the Base Unit of Mass shall be the kilogram, kilogram being a unit of mass equal to the mass of the

international prototype of the kilogram. The base unit of length shall be the metre. The Ordinance prohibits the use and manufacture of non-standard weights and measures. It also prohibits the inscription or indication of weight or measures except in accordance with the standards laid down. The Ordinance further provides for penalties in Secs. 32 to 55.

The offences punishable by this Chapter are not defined with reference to any precise standard of weight or measure established by law. A false weight or measure here signifies that—taking the law or the ordinary usage of the place, or the common understanding of the parties, to have fixed on certain known instrument of weight or measure, with reference to which two persons deal together—the false dealer by deceit substitutes another weight or measure in order to defraud.

Section 264

264. Fraudulent use of false instrument for weighing—Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cases and Materials

1. Scope.—(1) This section relates to fraudulent use of an instrument for weighing which are known to be false and used for the purpose of proving of short weight as full weight. Section 153, CrPC may be read for the purpose of inspection of weights and measures by police.

(2) This section requires two essentials:

(i) Fraudulent use of an instrument for weighing.

(ii) Knowledge that such instrument is false.

(3) Intention to defraud is the essential ingredient of the offence under the section and in the absence of any evidence of such intention the accused cannot be punished. *(1862) 18 Suth WR 7.*

(4) Where it was found that the weighing machine in possession of the accused was to be adjusted before use and the Inspector of Weights and Measures had not adjusted it before examination, it was held that the accused could not be held guilty for possession of incorrect weighing machine. *(1862) 121 ER 1094.*

(5) Where the weighing machine was out of repairs for a fortnight so that when anything was weighed by it the weight appeared to be four pounds more than its actual weight, the accused was held guilty of possessing an incorrect weighing machine. *(1865) 34 LJMC 31(34).*

(6) The accused possessed a machine for weighing tea which had under the scoop in which tea was placed a piece of paper the effect of which was to make the machine indicate weight exceeding by the weight of the paper, the weight of the tea in the scoop. The paper was placed for convenience and expedition, in weighing because it would take longer to weigh the tea if it were placed in the bag in which it was to be sold before being put into the scoop. The paper weighed less than the bag. Still, the accused was held guilty of possessing false and unjust weighing machine. *(1899) 2 Q and B 673.*

(7) A girl in the employment of the accused placed a paper bag under the scoop where it remained whilst the tea was being weighed. When the weighing was finished the girl put the machine with the

bag still under the scoop aside the shelf. Precautions were taken to ensure that the bag should not be used for any other weighing. It was held that the accused had committed an offence of using for trade a weighing machine which was false and unjust. *(1905) 1 KB 410.*

(8) The accused had in his possession weighing machines consisting of pair of scales correct as to balance at the time they were found by the Inspector of Weights and Measures but having a hollow brass ball hanging upon the weight end of the beam of each pair, the balls being constructed with necks which could be unscrewed so as to allow shot to be placed in the interior and being hung by stout brass wire hooks upon the beam end of the scales from which they were easily removable by merely lifting them off. Without the shot which the balls contained the scales would be unjust and against a purchaser. The balls formed no part of the scales. The accused was held guilty of having in his possession unjust weighing machines. *(1868) 3 QB 433.*

2. Practice.—Evidence—Prove: (1) That the instrument in question is one for weighing.

(2) That it is a false one.

(3) That the accused knew it to be false.

(4) That he used it knowing it to be so.

(5) That he did as above with intent to defraud.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, fraudulently used a certain instrument for weighing to wit—, knowing it to be false at the time of using it, and thereby committed an offence punishable under section 264 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 265

265. Fraudulent use of false weight or measure.—Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cases and Materials

1. Scope.—(1) Section 264 punishes one who uses a false balance; this section punishes one who uses a false weight or measure. To ascertain whether a measure is false or not, the only proper test to apply is that of the measure, and the same articles must be measured in each case, and proof should be adduced that this had been done. A person cannot be convicted under section 265 where there is no complaint by a purchaser *(9 CrLJ 4 Lah).*

(2) For a conviction under this section the prosecution must prove the following ingredients: (a) that a weight or measure of length or capacity was a false one; (b) that the accused used such a weight or measure; and (c) that he did so fraudulently. *1982 (2) CriLJ 693.*

(3) In every place there were well-known customary weights and if any one used knowing that a weight was less than the customary weight which it purported to be used the weight dishonestly, he committed a fraud. *(1909) 14 Mys CCR No. 74 p. 524.*

(4) In the absence of standard weight prescribed by lawful authority or generally recognised by local custom no presumption of fraud could arise and a conviction for short weight could not be sustained. *(1909) 9 Cri LJ 415 (Upp Bur).*

(5) Where in a ginning factory the Police Sub-Inspector found that there was an additional weight of 1/4 seer attached to the Maund, so that, the owner who purchased cotton from the villagers paid to them only the price of a maund while every time the owner got cotton weighing more than a maund and there was a practice according to the Mandi Committee to add 1/4 seer for every maund, the prosecution having failed to establish that the accused fraudulently used a false weight, the accused could not be convicted. *1962 (2) CriLJ 693.*

(6) The accused was getting his grain measured with a katha which he borrowed for the purpose from another person who told him that it was passed by the Notified Area Committee. When the katha was seized by the police they found it to measure five tolas more than the standard katha. It was held that the accused could not be convicted under this section in the absence of proof that he knew that the khata was incorrect or that before he used it he tampered with it. *AIR 1929 Nag 239.*

2. Practice.—Evidence—Prove: (1) That the weight or measure is a false one or that it is different from what it was used as.

(2) That the accused used such false or different weight or measure.

(3) That he did as above with intent to defraud.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, fraudulently used a false weight (or false measure of length or capacity) or fraudulently used a weight (or measure of length or capacity), or as a different weight (or measure) from what it was, and thereby committed an offence punishable under section 265 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 266

266. Being in possession of false weight or measure.—Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and[Sic] intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Sic. Here, the word "and" is not necessary both syntactically and semantically. In India it was rightly omitted in 1953. *-Chief Editor*

Cases and Materials

1. Scope.—(1) This section relates to the possession of a false weight or measure with knowledge of its falsity or the use thereof with intent to defraud. Mere possession of the false weights or measures is not sufficient. Fraudulent intention is an ingredient of an offence under this section *(41 CrLJ 172)*. The offence under this section is an offence against society and in such cases no leniency in the sentence will be showed *(1959 CrLJ 1112)*.

(2) In comparing weights used in the bazar some reasonable allowance should be made for wear and tear and for the rough and ready methods of bazar shopkeepers. *AIR 1914 Lah 42.*

(3) Where both the purchaser and the seller are aware of the actual measure used there can be no question of fraudulent intention. It is only when the seller purports to sell according to a certain standard and sells below that standard that he can be said to be guilty of fraud. *AIR 1939 Bom 455.*

(4) Where it has been agreed between the seller and the purchaser that a certain commodity should be measured by a certain measure produced by the seller and the seller has not represented in any way that the measure was the standard measure, the seller cannot be said to have a fraudulent intention. *AIR 1939 Bom 455.*

(5) The fact that an offence may have been committed under the Weights and Measures Act does not make the measure false within the meaning of this section. *AIR 1939 Bom 455.*

(6) If a dealer has a measure in his shop which has been tested by Government and certified to be a proper measure, there is no reason to presume that he could have known that it was not a correct measure or that at the time the stamp was put on the measure it was not up to the prescribed standard. If the measures are found to be short there is no presumption that he was using them fraudulently. *AIR 1943 Mad 589.*

(7) If weights are kept in a shop by a person for the purposes of his trade and are regularly used by him, this would lead to a reasonable inference that the person knew that they were deficient and that he was using them fraudulently. *AIR 1945 Mad 8.*

(8) Where the evidence showed that the accused was sitting on the gunny bag from beneath which true and false weights were recovered by the police officer, that a series false weights were found at a distance of 4 inches from the series of true weights and that the box containing opium and the scales for weighing it were near the gunny bag, it was held that the only inference that could be drawn from these circumstances was that the accused possessed false weights knowing them to be false and intending that the same might be fraudulently used. *AIR 1959 Raj 191.*

(9) The offence under this section is an offence against the society and in such cases any leniency will be misplaced. *AIR 1959 Raj 191.*

(10) The essential ingredients of the offence should be proved by the prosecution at the stage when the evidence for the prosecution is called. The prosecution cannot seek to use an admission in the accused's statement to fill up the gap in the prosecution evidence. *AIR 1937 Mad 209.*

2. Practice.—Evidence—Prove: (1) That the instrument, or the measure, or the weight in question is false.

(2) That the accused was in possession of the same.

(3) That he knew the same to be false.

(4) That he intended that such false weight, etc, should be used to defraud someone.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate, etc) hereby charge you (name of the accused) as follows:

That you, on or about the—day of— at—in possession of an instrument for weighing (or of weight or a measure of length or a measure of capacity) which you knew to be false at the time of your possession intending that the same may be fraudulently used, and thereby committed an offence punishable under section 266 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 267

267. Making, or selling false weight or measure.—Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Materials

1. Scope.—(1) This section punishes a person who makes, sells or disposes of a false balance, weight or measure. The object is to prevent the circulation of false scales, weights or measures.

2. Practice.—Evidence—Prove: (1) That the instrument, or the measure, or the weight in question is false.

(2) That the accused either made, sold or disposed of the same.

(3) That he then knew it to be false.

(4) That he so made, sold, or disposed of it, in order that it might be used as true, or that he knew that it was likely to be used as true.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—made (or sold, or disposed of) namely—which was an instrument for weighing (or any weight or measure of length or capacity) knowing at the time of making (or sale or disposal) to be false in order that the said instrument for weighing (or any measure of length or capacity) was likely to be used as true and thereby committed an offence punishable under section 267 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

CHAPTER XIV

Of Offences affecting the Public Health, Safety, Convenience, Decency and Morals

Chapter introduction.—*This chapter deals with public nuisances and offences affecting public health, safety, convenience, decency and morals. Nuisances are of two kinds: (i) namely public, affecting members of the public, or (ii) private affecting a private person. In Clerk and Lindsell on Torts—"Nuisance" is an act or omission which is an interference with or disturbance of or annoyance to a person in the exercise or enjoyment of—*

(a) a right belonging to him as a member of the public when it is a public nuisance, or

(b) his ownership or occupation of land or of some easement, quasi-easement or other right used or enjoyed in connection with land when it is a private nuisance".

This Chapter deals with public nuisances. Public nuisances are offences against the public by either doing a thing which tends to the annoyance of all the subjects or by neglecting to do a thing which the common good require. This Chapter and Chapters X and XI of the Criminal Procedure Code deal with public nuisance and abatement of public nuisance. Nuisance causing or conducive to the injury, destruction, danger or annoyance to persons collectively are dealt with in this Chapter. The offences contained in this Chapter are grouped in Dr. Hari Singh Gour's Indian Penal Code 9th Ed., Vol. II page, 1895 as follows:

(1) Spread of infection (See sections 269-271).

(2) Fouling water (See section 277).

(3) Making atmosphere noxious to health (See section 278).

(4) Adulteration of food, drink and drugs (See sections 272-276).

(5) Rash driving (See section 279).

(6) Rash Navigation (See sections 280 and 282).

(7) Endangering public ways (See sections 281 and 283).

(8) Negligent handling of poisons, combustibles and explosives (See sections 284-286).

(9) Negligence with respect to—

(a) Machinery (See section 287).

(b) Buildings (See section 288).

(c) Animals (See section 289).

(10) Spread of obscenity (See sections 292-294).

(11) Public gambling (See section 294A).

Section 268 defines public nuisance. The following sections provide for punishments for different kinds of public nuisances and section 290 provides punishments for anyone committing public nuisances which are not provided for in the other sections of this Chapter.

In order to constitute the offence of public nuisance there must be a real damage as a sensible person subjected to it would find injurious regard being had to the situation and mode of occupation of the property injured. The nuisance must be to the general public or a section of the public and not merely an individual or of any particular community. The obstruction of a navigable river by a bamboo stockade with a small opening to allow boats to pass with difficulty will be a public nuisance.

The fact that a public nuisance has been in existence for a number of years in the same place will not legalise it. The fact that there are other nuisances in the neighbourhood will not be a proper defence. In judging public nuisance, the public good, it may cause, be taken into account to see if public benefit outweights the public nuisance. The advantage gained ought to be closely connected with the inconvenience resulting or rather without which would have been an inconvenience if it were not absorbed in the superior advantage.

Further the indecent exposure of the person in a public plan may be punished if there is a wilful intention to insult, the modesty of a women. But under section 509 however, it may be punished even if there is no such intention. Nuisances punishable under the Code may still be made the subject of civil action before or without prosecution.

Section 268

268. Public nuisance.—A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

Cases and Materials : Synopsis

1. *Scope and applicability of section.*
2. *Nuisance—Meaning of.*
3. *Public and private nuisance—Distinction.*
4. *Act or illegal omission.*
5. *Intention to commit nuisance.*
6. *Legalised nuisance.*
7. *Length of time—Whether can legalise public nuisance.*
8. *Public nuisance causing some advantage or convenience.*
9. *"Public", meaning of.*
10. *Panchayat Committee—Whether "public".*
11. *Common injury, etc., to the public or people in general living in the vicinity.*
12. *Injury, annoyance, etc., to one class of people.*

1. Scope and applicability of section.—(1) Nuisances are of two kinds (i) public and (ii) private. 'Private nuisance' is defined to be anything done to the hurt or annoyance of the lands, tenements of another, and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large. 'Public nuisance' or common nuisance is an offence against the public, either by doing a thing which tends to the annoyance of the whole community in general, or by neglecting to do anything which the common good requires. The definition of public nuisance given in this section is material with reference to section 290 which provides a punishment for the offence of committing a public nuisance in any case not otherwise punishable by the Code. Chapter XIV of the Penal Code and Chapters X and XI of the CrPC deal with public nuisance and abatement of public nuisance. Nuisance causing or conducive to the injury, destruction, danger or annoyance to persons collectively are dealt with in this Chapter. Section 133, CrPC provides a speedy and summary remedy in case of urgency where danger to public interest or public health is concerned.

(2) Ingredients—This section requires two essentials:

(i) A person must do an act or must be guilty of an illegal omission.

(ii) Such act or omission must cause—

(a) common injury, danger, or annoyance (i) to the public or (ii) to the people in general who dwell or occupy property in the vicinity, or

(b) injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

(3) Noise made in carrying on of lawful trade under licence, if injurious to physical comfort of community, is a public nuisance as contemplated in section 268. *PLD 1968 Dhaka 823.*

(4) It is no defence to the charge of committing public nuisance that the act was done to protect the accused's own lands and crops. *(1912) 13 CriLJ 183 (All).*

(5) The definition of "public nuisance" in this section is also applicable to the Civil P.C. by virtue of S. 3(48) of the General Clauses Act. *AIR 1972 Raj 103.*

2. Nuisance—Meaning of.—(1) There is a difference between injury to property and personal discomfort. As regards personal discomfort, a person must, in the interest of the public generally, submit to the discomfort of the circumstances of the place and the trades carried on around him; but as

regards injury to property the same rule is not applied. In regard to injury to property the law does not regard trifling and small inconveniences but only regards sensible inconveniences, injuries which sensibly diminish comfort, enjoyment or value of the property which is affected. *(1865) 11 AR 1483.*

3. Public and private nuisance—Distinction.—(1) A nuisance which causes injury, danger or annoyance only to a particular person or group or class of persons is not a public but a private nuisance. *AIR 1950 Cal 349.*

4. Act or illegal omission.—(1) The words "illegal omission" in this section must be construed in the light of the definitions of words 'acts', 'act' and "illegal" given in Ss. 32, 33 and S. 43 respectively. Unless the omission which causes the nuisance, is an illegal omission in the above sense there will be no public nuisance. *(1894) 1 Weir 244.*

5. Intention to commit nuisance.—(1) An unintentional obstruction of a public way caused by keeping a charpoy on a public road will be a public nuisance, although there may be no deliberate intention to cause such obstruction. *(1935) 36 CriLJ 893 (All).*

6. Legalised nuisance.—(1) The general principle is that a public nuisance cannot be legalised merely by the fact of its continued existence for a long time. The principle is that no length of time can legalise a public nuisance. *(1871) 16 SuthWR Cr 6 (11).*

7. Length of time—Whether can legalise public nuisance.—(1) The general principle is that no length of time can legitimise a public nuisance. *AIR 1958 Punj 11 (12) : 1958 CriLJ 91.*

(2) Twenty or twenty-five years previously a businessman set up a factory at a considerable distance from the houses of the people, which continued working as a flour mill for many years. But subsequently it was converted into a metal factory manufacturing brass utensils. Some of the owners and occupiers of residential buildings, which had sprung up in the vicinity of the factory, filed a complaint against factory owner. It was held that the mere fact that the factory was allowed to operate for several years without any objection having been raised by the neighbours would not render the person immune from punishment and the businessman was held guilty u/s. 290. *AIR 1958 Punj 11.*

(3) An act which was not a nuisance at its commencement may subsequently become one owing to a change in the circumstances, notwithstanding the length of time for which it might have been in existence. *AIR 1958 Punj 11.*

8. Public nuisance causing some advantage or convenience.—(1) Under S. 81 an act done in good faith for the purpose of preventing or avoiding other harm to person or property is not an offence although such act may be done with the knowledge that it is likely to cause harm. But this is a general exception and must yield to the special provision in paragraph 2 of this section. *AIR 1940 Pat 577.*

9. "Public"—Meaning of.—(1) The word "public" in S. 268 has to be taken in the sense defined in S. 12 of the Code in which the word "public" has been defined as including any class of the public or any community. *AIR 1936 Oudh 154.*

10. Panchayat Committee—Whether "public".—(1) A Panchayat is not the same as the 'public' and hence injuries to the revenues of the Panchayat is not injury to the public so as to constitute a public nuisance. Hence, the non-payment of a Panchayat tax is not a public nuisance. *AIR 1964 All 16.*

11. Common injury, etc., to the public or people in general living in the vicinity.—(1) To constitute an offence under this section firstly, there must be an injury, danger or annoyance and this injury etc. must be to the public or the people in general who live or occupy property in the vicinity.

The injury etc. may be one which is actually caused to the public or the people in general living in the vicinity, or which must necessarily be caused to anyone who may have occasion to use a public right. *AIR 1958 Madh Pra 350.*

12. Injury, annoyance, etc., to one class of people.—(1) Injury, or annoyance or probability thereof to a particular class of people will not be a public nuisance within the meaning of this section. *AIR 1928 All 627.*

(2) Injury to the cultivators of a particular village has been held not to be a public nuisance. *AIR 1928 All 627.*

13. Annoyance to one person.—(1) Even annoyance to one person will be sufficient to bring the act within the purview of this section. *AIR 1924 All 194.*

14. Slaughtering, skinning, etc. of animals, running butcher's shop, cooking meat in public, etc.—(1) Public nuisance being essentially a question which depends on the circumstances of each case the slaughtering of cows may, under certain circumstances, amount to a public nuisance, although such slaughtering may be offensive in particular to the Hindu community. *AIR 1942 Pat 471.*

(2) A person wilfully slaughtering cattle in a public street so that the groans and the blood could be heard and seen by persons passing along the street would commit an offence under this section. Such an act would cause annoyance to everyone whether Hindu, Muslim, European or other. *AIR 1942 Pat 471.*

(3) The skinning of a dead animal, which has died a natural death, in public is not a public nuisance. *AIR 1914 All 363.*

(4) The slaughter etc. of animals within closed doors, or in a private enclosed place not open to view from the outside will stand on a different footing than slaughtering of animals, especially cows etc. in the public and may not be regarded as constituting a public nuisance as in such a case the public in general are not affected, although the susceptibilities of Hindus may be hurt by such a proceeding. *AIR 1929 Lah 252.*

15. Ruinous building, wall, etc.—(1) Where a wall of a house collapsed and caused injury to the complainant's property by its fall into his compound, it was held that neither this section nor S. 288 nor Section 425 of the Code was applicable to the case, and that the case was clearly one of tort to be decided in a Civil Court. *(1904) 1 CriLJ 488.*

16. Obstruction to public road, navigable river, etc.—(1) Though S. 283 may not apply in a case as obstruction to any particular person has not been proved this section read with Sec-290 may apply if the nuisance is one which must necessarily cause obstruction to any person who may have occasion to use the public way or river, channel, etc. *AIR 1925 Lah 454.*

(2) Encroachment, however small on a public street or highway is an offence, as the public is entitled to use every part of the highway, however wide it may be. *AIR 1925 Lah 454.*

(3) The public nuisance in relation to a highway may be caused by a positive act or an illegal omission. Thus, allowing prickly pear to spread from one's compound to the public road is a public nuisance. *AIR 1928 Mad 1235.*

(4) Collecting a crowd so as to obstruct traffic is a public nuisance. *AIR 1924 All 568.*

(5) Merely offering State tickets for sale in a shop is not a public nuisance, although a number of persons gather in front of the shop for buying the trickiest and thereby cause obstruction to the public. *AIR 1929 Lah 801 (801) : 31 CriLJ 442.*

(6) Building of platforms in front of houses or shops and abutting on public streets is a public nuisance. *AIR 1936 All 156 (157) : 37 CriLJ 269.*

(7) A public nuisance on a highway or public street by means of an obstruction may be caused even in the absence of any deliberate intention to do so. *AIR 1935 All 746.*

(8) Under this section in order to constitute a public nuisance, an obstruction may be caused by any act or illegal omission, which means that obstruction caused by negligence though without any deliberate intention may be a public nuisance. *AIR 1935 All 746.*

(9) Whether a thing amounts to a public nuisance or not depends to a considerable extent on the question whether it really causes inconvenience or annoyance or difficulty to the public in general, or to the people living in the locality. *AIR 1959 Mad 513.*

(10) It is a matter of common experience that villagers stack logs of wood and fuel on the public road for temporary purpose. In such a case the act, though it causes some inconvenience to the user of the public road, is not punishable. *AIR 1967 Orissa 36.*

17 Encroachment on public road, place, etc.—(1) Where an occupier of land adjoining a meadow, on which cattle are pastured, grows on his land a tree whose leaves are poisonous, he will be liable for damages if the branches of the tree project on the adjoining meadow and cattle browse on the leaves of the tree and die in consequence. *(1879) 48 LJQB 109.*

18. Collecting crowd.—(1) If a person collects together a crowd of people and causes annoyance to people generally in the neighbourhood or obstructing the traffic on a public highway, he would be committing a public nuisance. *(1832) 110 ER 68.*

19. Carrying on business or trade.—(1) The question wither a particular trade or business amounts to a nuisance can be determined only after taking into consideration a number of circumstances such as the place where it is located, the number of people whose rights are prejudicially affected thereby and the extent of the injury, discomfort and annoyance caused to normal human beings. *AIR 1958 Punj 11.*

20. Acts dangerous to public health.—(1) The causing of stagnation of water, so as to give rise to the breeding of mosquitoes and offensive smell and endangering the health of persons living in the vicinity, is a public nuisance. *AIR 1953 Mad 242.*

(2) An occupier of a mill issuing black smoke in objectionable quantity from its chimney is guilty of committing public nuisance. *AIR 1958 Punj 11.*

21. Insanitary conditions.—(1) A mere act of passing urine in any place open to the public will not amount to the offence of public nuisance under this section, unless the act is such as would cause annoyance to the public in general. *AIR 1937 Mad 130.*

(2) There can be no conviction for public nuisance in a case of letting of clean water on to a public road where there is no evidence to show that the public and neighbours did feel that any nuisance had been committed. *1932 MadWN 111.*

22. Offensive odour.—(1) The word "nuisance" is not necessarily something which is injurious to health. Matters substantially offensive to the senses, like offensive odour etc., may also be public nuisances within the meaning of the section. *(1907) 5 CriLJ 45.*

(2) Where the manager of a bone-mill permitted a large stack of bones to remain uncovered in the open for a long time so as to become rotten and to emit a smell noxious to people living in or passing by the vicinity, it was held that he was guilty of committing public nuisance. *(1907) 5 CriLJ 45.*

23. Fouling of water.—(1) The fouling of water of a river running in a continuos stream does not amount to the fouling of the water of a public spring within the meaning of S. 277, but it may come under this section read with Sec. 290. *(1904) 1 CriLJ 6.*

24. Burial, cremation of dead bodies, etc.—(1) Where persons entitled to use a particular spot dedicated for the purpose of cremation use it for that purpose in a manner neither unusual nor calculated to aggravate the inconveniences incidental to such act as it is generally performed in the country, they cannot be convicted of public nuisance on the ground that their act caused material annoyance and discomfort to persons near the place on the occasion of the cremation. *(1896) ILR 19 Mad 464.*

25. Noise, etc.—(1) The noise of a theater causing annoyance to the residents of a single house in the neighbourhood is not a public nuisance. *AIR 1930 Cal 713.*

(2) The working of an engine of a motor cycle emitting noise on a particular day for a short period cannot amount to a public nuisance as the act complained of should cause a common injury or annoyance to the public or to the people in general who occupy property in the vicinity. *(1984) 1 APLJ 239.*

(3) The noise made by a chowkidar of a house at night time so as to scare away thieves and bad characters is not a public nuisance, although by so doing he might hurt the susceptibilities of a neighbour. *AIR 1926 Oudh 414.*

(4) Once the level of noise made by life in the building is such that it interferes with the use and enjoyment of the building then there is nuisance. *(1981) 1 WLR 898 (906).*

26. Gambling.—(1) Gambling in a public place is a public nuisance. *AIR 1916 Mad 617.*

(2) Gambling in a private house is not in itself a public nuisance. *(1891) ILR 14 Mad 364.*

27. Prostitutes.—(1) Bare solicitation by a prostitute is not a public nuisance. The reason is that annoyance caused to a single person, though in a public place, cannot be brought under the definition of a "public nuisance". *(1900) ILR 22 All 113.*

(2) Prostitution carried on in a clandestine or hidden manner is not a public nuisance, although persons who come to know of the immoralities committed in the house may feel their moral sense outraged. *AIR 1950 Cal 330.*

28. Indecent exposure of person, etc.—(1) Indecent exposure of one's person will be an offence of public nuisance, although the place where the person stands is not a public place, if it is a place where a number of persons belonging to the public can and do see the person. *(1861-64) 9 Cox 388.*

(2) Bathing naked near houses on the beach is a public nuisance, although the houses may have been erected recently and the practice of bathing in the sea at that place may have gone on for a long time. *(1871-74) 12 Cox 1 (2, 3).*

29. Obscene, indecent, etc., exhibitions.—(1) Exposure of dead body of child near public highway causing shock and disgust to passers-by and outraging public decency was held to be a nuisance at the common law. *(1882-86) 15 Cox 171.*

(2) In a public nuisance abatement action against motion picture theater for exhibiting obscene pictures, proof that pictures in question are obscene beyond reasonable doubt is not required. *(1982) 70 L Ed (2d) 262.*

30. Non-payment of taxes.—(1) The non-payment of Panchayat tax is not public nuisance, injury to the revenues of the Panchayat is not the same as common injury etc., to the public, as the public is a different body from Panchayat. *AIR 1964 All 16.*

31. Excommunication.—(1) Excluding two persons from caste privileges or from use of wells used by orthodox Hindus does not amount to offence of public nuisance. It is only a civil wrong, if at all, for which the remedy lies in a Civil Court. *1883 PunRe 3.*

32. Person liable for public nuisance.—(1) A joint owner of property is responsible in law for a public nuisance caused by his property. *AIR 1928 Mad 1235.*

(2) Where a public nuisance is committed by building a platform in front of a house or shop abutting on the road, it is the owner of the shop or the house who is liable and not the tenant or the shopkeeper who sits on the platform, because the platform is a nuisance, whether it is used by anyone or not. *AIR 1936 All 156.*

(3) Where a public nuisance is caused by the working of a paddy husking mill at night, it is the Manager who is liable and not the proprietor. *AIR 1919 Cal 539.*

33. Evidence of nuisance.—(1) Where a "Prabha" which was two yards wide was left lying on the road at a place where the road was three yards wide it was held that though obstruction to an individual was not expressly proved, it was a matter of necessary inference. *AIR 1916 Mad 847.*

34. Remedies.—(1) Obstruction on public way—Plaintiff required to make detour—Damage is nonetheless special because other persons may suffer some inconvenience—Plaintiff's suit though not instituted under O. 1. R. 8 or under S. 91 is maintainable. *AIR 1951 Mad 498.*

(2) A complaint as regards a public nuisance may be preferred by any member of the public including a public officer. And where such a complaint is filed by a public officer as such, it cannot be thrown out on the ground that he has not professed to complain as an ordinary citizen, but professes to do so as a public officer. *AIR 1928 Mad 1235.*

35. Procedure.—(1) The various remedies for public nuisance are concurrent and not mutually exclusive. A prosecution under this section will, therefore, not be barred merely because previous to such prosecution, proceedings have not been taken under the Criminal P.C., S. 133, for the removal of the nuisance. *1869 RatUnCriC 23.*

36. Jurisdiction.—(1) The mere fact that the annoyance caused by the public nuisance committed at a place outside Bd is felt by the people living in Bd will not give jurisdiction to the Bd Court to try the offence in the absence of certificate of the political agent of the concerned area or in his absence the sanction of the Government. *AIR 1935 Mad 189.*

37. Abatement of nuisance.—(1) The accused who obtains an injunction against the complainant for removal of dams obstructing accused's right of way and on the complainant not obeying the injunction removes the dams himself, is guilty under S. 426, as he is not entitled to take the law into his own hands. *AIR 1927 Bom 363.*

Section 269

269. Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Cases and Materials

1. Scope.—(1) This section may be read along with sections 26, 32 and 33 of this Code. Sections 269 to 271 deal with the spread of infectious disease. If a man is attacked by a contagious and deadly disease and needlessly goes abroad with it in a public way or if a person carries about a child so infected, he does what he may be supposed to know to be likely to spread the infection. And unless some lawful occasion or reason for this conduct can be shown, as that the sick person had been directed to be removed to a hospital and that the removal was not performed with due caution, the act will be an offence punishable under this section.

(2) The object of this section is not to punish the accused for his unlawful act, such as the disobedience of the order of the Health Officer to remove a smallpox patient to an Isolation Hospital. But the object is to prevent the danger of the infection spreading and so, where the accused has removed the patient to a separate and isolated house and the Court finds that there is no danger of the infection spreading, the accused will not be guilty under this section despite his noncompliance with the Health Officer's order to remove the patient to an Isolation Hospital. *AIR 1920 Mad 420.*

(3) The failure of the owner of a brick field to report the outbreak of cholera in his field was held not to be an "illegal" omission and hence, as not coming within this section. *AIR 1923 Rang 140.*

(4) The failure of the accused to take proper sanitary precautions at his brick field as required by the conditions of his licence which led to the outbreak of cholera costing many lives on his brick field, was held to be an illegal and criminal omission on the part of the accused. *AIR 1923 Rang 140.*

(5) Under S. 32, "act" includes an illegal omission. This principle applies also to the interpretation of the word "act" in this section. *AIR 1923 Rang 140.*

(6) The mere disobedience of the orders of the Health authorities for the removal to the Isolation Hospital of a patient suffering from smallpox will not be an offence under this section where the accused has not done anything to spread the infection but has removed the patient to a separate and isolated house, though not to the Isolation Hospital. *AIR 1920 Mad 420.*

(7) The expression "dangerous to life" does not mean that the disease should be immediately dangerous to life. Thus leprosy may be treated as a disease dangerous to life within the meaning of this section. *AIR 1955 NUC (Bom) 4834.*

2. Practice.—Evidence—Prove: (1) That the disease in question is (a) infectious and (b) dangerous to life.

(2) That the accused did not act which was likely to spread infection thereof.

(3) That such act was unlawful or negligent.

(4) That the accused knew, or had reason to believe, that such act of his was likely to spread the infection of such disease.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you unlawfully or negligently did an act which you knew or had reason to believe to be likely to spread the infection of (name of the disease) dangerous to human life and thereby committed an offence punishable under section 269 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 270

270. Malignant act likely to spread infection of disease dangerous to life.—Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) The word "malignantly" does not merely convey the idea of hatred or ill-will to an individual but includes any wicked or mischievous intention of the mind. *(1822-1830) 107 ER 379.*

2. Practice.—Evidence—Prove: (1) That the disease in question is (a) infectious and (b) dangerous to life.

(2) That the accused did an act which was likely to spread infection thereof.

(3) That the accused acted malignantly.

(4) That the accused knew, or had reason to believe, that such act of his was likely to spread the infection of such disease.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you militantly did an act which you knew or had reason to believe to be likely to spread the infection of (name of the disease) a disease dangerous to life and thereby committed an offence punishable under section 270 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 271

271. Disobedience to quarantine rule.—Whoever knowingly disobeys any rule made and promulgated [1][by the [2][Government]] [3][* * *] for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Materials

1. Scope.—This section prescribes punishment for breach of quarantine rule. The motive for disobeying any rule is quite immaterial under this section. The disobedience is punishable whether any

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1. The words "by the Central or any Provincial Government" were substituted for the words "by the G. of I. or by any Government" by A.O. 1937.
2. The word "Government" was substituated for the words "Central or any Provincial Government" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), Second Schedule (with effect from 26th March, 1971).
3. The words "or the Crown Representative" were omitted by A.O. 1949, Sch.

injurious consequence flows from it or not. While a disobedience of a lawful order made by the Government is punishable under section 188 of the Penal Code, under this section a knowing disobedience of the lawful order is covered.

2. Practice.—Evidence—prove: (1) That there is existence of the rule of quarantine.

(2) That such rule was made and promulgated by Government.

(3) That the accused knew of such rule.

(4) That he disobeyed it knowingly.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you on or about the—day of—at—knowingly disobeyed the quarantine rules (specify the rule) made or promulgated by the Government for putting any vessel into a state of quarantine with the shore or other vessels or for regulating the intercourse between places where an infectious disease prevailed and other places and you have thereby committed offence punishable under section 271 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 272

272. Adulteration of food or drink intended for sale.—Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials

1. Scope.—(1) This section deals with adulteration of food or drink intended for sale. It is an offence to knowingly sell food unfit for human consumption. It is essential to prove that an article of food or drink has been adulterated with the intention to sell the same as food or drink. The word "noxious" means harmful or injurious to health. The section may be read along with section 521, CrPC.

(2) Adulteration of food—Mere possession of any alleged adulterated food in any premise by itself will not constitute an offence under section 272 of the Penal Code and Section 25C(a) of the Special Powers Act, 1974 unless it is alleged and proved that a particular person or a group of persons were personally involved in the process of adulteration of food or selling thereof. *Mohammad Nazarul Islam Vs. The State 3 BLD (HCD) 65.*

(3) Legislation of preventing food adulteration serves a very important role in securing to the citizens a minimum degree of purity in the articles of food and thereby protecting and preserving public health. It also serves to prevent fraud on the consumer public. *1965(2) CriLJ 571(Punj).*

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4. The word "taka" was substituted for the word "rupees" by Act VIII of 1993, w.e.f. 26-3-1971.

(4) For an adulteration of food or drink to fall under this section it is necessary that the adulteration has rendered the food/drink noxious. That is not required in offences under the Prevention of Food Adulteration Act. Thus, mixing water with milk intending to sell the compound is in itself no offence under this section unless there is anything to show that the milk was rendered noxious as food or drink by the admixture of water. But such adulteration will be an offence under the Prevention of Food Adulteration Act. *AIR 1926 Lah 49.*

(5) The expression "noxious as food" means unwholesome as a food or injurious to health. It does not mean repugnant to one's feeling. Thus, mixing of pig's fat with ghee and selling the mixture would not render the article "noxious as food" though it may be noxious to the religious feelings of both Hindus and Mahomedans. Consequently, such mixing is not punishable under the section. *AIR 1924 All 214.*

(6) For a conviction under the section it is not enough that the article of food or drink has been adulterated. It is essential to show that it was intended to sell such article or that it was known that such article was likely to be sold as food or drink. *AIR 1943 Bom 445.*

2. Practice.—Evidence—Prove: (1) That the article in question is food or drink.

(2) That the accused adulterated it.

(3) That such adulteration rendered it noxious as food or drink.

(4) That the accused at the time of such adulteration intended to sell such article as food or drink, or knew it to be likely that such article would be sold as food or drink.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, adulterated article of food and drink namely—so as to make it noxious as food or drink with the intention of selling such article as food or drink or knowing it to be likely that the same will be sold as food or drink and thereby committed an offence punishable under section 272, Penal Code and within my congnizance.

And I hereby direct that you be tried on the said charge.

Section 273

273. Sale of noxious food or drink.—Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials

1. Scope.—(1) This section deals with sale or offer of exposure for sale of noxious articles as food and drink. This section is more comprehensive in its provision, and is not expressly limited to food intended for human consumption. It comes in the Chapter dealing with offences relating to public

health. It seems it is not intended to include food or drink for animals. The words "the public" mean human being in general and do not include animals. This section may be read along with section 521, CrPC.

2. Ingredients.—The essentials of this section are:—

(a) Selling or offering or exposing for sale as food or drink some article.

(b) Such article must have become noxious or must be in a state unfit for food or drink.

(c) The sale or exposure must have been made with a knowledge or reasonable belief that the article is noxious as food or drink.

(3) Where ghee adulterated with vegetable oil or with pig's fat is sold, in the absence of evidence to show that the adulteration was such as to render it noxious such sale cannot be held to constitute an offence under this section. *AIR 1924 All 214.*

(4) A person who exposes for sale milk adulterated with water is not guilty of an offence under the section. *AIR 1926 Lah 49.*

(5) When food unfit for human consumption is exposed for sale, the exposure constitutes an offence. *AIR 1934 Pat 113.*

(6) Knowledge that article for sale is noxious as food or drink, is required to be proved, for there is no warrant in law for the presumption that the accused knew or had reason to believe that an article of food was unfit for human consumption. *AIR 1922 All 273.*

(7) Conviction of a person under this section, when the charge preferred against him was under the Prevention of Adulteration Act is illegal. For the offence under S. 273. Penal Code requires existence of knowledge that the food was not genuine while no such knowledge is required under the said Act. *AIR 1952 Pat 77.*

(8) On conviction, the noxious article of food can be destroyed. But destruction of food under the Municipalities Act is no bar to a prosecution under this section as such destruction is not a judicial proceeding but only an executive act. *AIR 1934 Pat 113.*

2. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

3. Charge.—The charge should run as follows:-

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—sold or offered for sale or exposed for sale as food or drink an article—which had become noxious as food or drink, knowing or having reason to believe that the same is noxious as food or drink and you have thereby committed as offence publishable under section 273 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 274

274. Adulteration of drugs.—Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal

purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Materials

1. Scope.—This section deals with adulteration of drugs. It must be shown that by reason of adulteration efficacy of the medicine is lessened or its operation changed or the drug rendered noxious. On a conviction the court may order the drug or medical preparation to be destroyed as contemplated under section *521, CrPC.*

2. Practice.—Evidence—Prove: (1) That the article is a drug or medical preparaiton.

(2) That is was adulterated by the accused.

(3) That such adulteration tended to lessen its efficacy or to change its operaiton or to make it noxious.

(4) that the accused intended that such adulterated drug should be sold or used for a medicinal pupose as an unadulterated drug, or knew it was likely that it would be sold or used for the same.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the day—at—adulterated any drug or medical preparation in such a manner as to lessen its efficacy or change the operation of such drug or medical preparation, or to make it noxious intending that is shall be sold or used for or knowing it to be likely to be sold or used for any medicinal purpose as if it was not adulterated and thereby committed an offence punishable under section 274 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 275

275. Sale of adulterated drugs.—Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials

1. Scope.—The offence under this section consists in selling, or offering or exposing for sale, or issuing from any dispensary, and adulterated drug as unadulterated. This section prohibits its sale and also its issue from any dispensary. This section should be read along with section 521 CrPC, *(Ref. 5 BCR 251 AD).*

(2) The adulteration of a drug and the sale of the adulterated drug will be an offence under Ss. 274 and 275, although the ingredients used for the purpose of the adulteration are harmless, where the effect of the adulteration is to lessen the efficacy of the drug. *(1887) 19 QBD 582.*

2. Practice.—Evidence—Prove: (1) That the drug has been adulterated.

(2) That the adulteration was such as to lessen its efficacy or change its operation, or render it noxious.

(3) That the accused sold, or offered or exposed, such drug for sale; or that he issued it from a medical dispensary; or that he caused it to be used for medicinal purpose.

(4) That he sold, or issued such drug as an unadulterated drug; or cuased it to be used by a person who did not know of such adulteraiton.

(5) That he knew that such drug was so adulterated when he sold, etc.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.), hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—knowing that any drug or medical preparation had been adulterated in such a manner as to lessen its efficacy or to change its operation or render it noxious, sold or offered to sell or exposed for sale, or issued it from any dispensary for medicinal purpose as unadulterated or caused it to be used for medical purposes by any person not knowing of its adulteration and thereby committed an offence punishable under section 275, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 276

276. Sale of drug as a different drug or preparation.—Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials

1. Scope.—(1) The offence under this section is the sale or offer for sale or exposure for sale of something, which is not what it purports to be. The essence of the offence is the false pretence involved.

(2) This section differs from the Sale of Food and Drugs Act, 1875 in as much as under the latter Act, the sale must be to the prejudice of the purchaser. Thus, if the chemist knowingly sold paregoric substitute when the purchaser asked for paregoric poison it will be an offence under this section though it is not an offence under the above said Act. *(1909) 99 LT 833.*

2. Practice.—Evidence—Prove: (1) That the accused sold, or offered, or exposed for sale, or issued from a dispensary the drugs or medicinal preparation as different from what it is.

(2) That the accused knew that such drugs are different.

(3) That the accused knew of the difference at the time of sale or offer for sale, etc.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—knowingly sold or offered for sale or exposed for sale or issued from a dispensary for medicinal purposes any drug or medical preparation as a different drug or medical preparation and you have thereby committed an offence punishable under section 276 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 277

277. Fouling water of public spring or reservoir.—Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred [4][taka], or with both.

Cases and Materials

1. Scope.—The offence under this section consists of voluntarily fouling water of a public spring or reservoir making it less fit for the purpose for which it is ordinarily used. The words "corrupts or fouls water" are used in its literal sense. The water of a public spring or reservoir belongs to every member of the public in common, and if a person voluntarily fouls it, he commits public nuisance. This section may be read along with section 39, PC.

(2) A well will be a public well, if people are allowed to use its water although they may not be doing so as a matter of legal right, but merely as licences. *AIR 1916 Nag 15.*

(3) This section does not apply to the pollution of a well, which the complainant claims to be his private well, particularly in the absence of any evidence to show that the public were using the water as a matter of right. The mere fact that the neighbours were using the water of a well would not make it a public well. *AIR 1954 Pat 309.*

(4) Spitting into a public well, the water of which is used for drinking purposes, would be an offence under this section, in spite of the fact that by such spitting the degree to which the water has been rendered unfit for drinking purposes may be only very slight. *AIR 1916 Nag 15.*

2. Practice.—Evidence—Prove: (1) That the water in question was of a public spring or reservoir.

(2) That the accused corrupted or fouled such water.

(3) That he did so voluntarily.

(4) That such act of corrupting or fouling the water rendered it less fit for the purpose of which it was ordinarily used.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—voluntarily corrupted or fouled the water of the public spring namely—or the reservoir namely—so as to render it less fit for the purpose of which it is

ordinarily used and thereby committed an offence punishable under section 277 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 278

278. Making atmosphere noxious to health.—Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred [4][taka].

Cases and Materials

1. Scope.—Prosecutions against offensive trades which give out bad smells will come under this section. Throwing of a human skull in a highly offensive condition out of malice into a private dwelling house does not warrant conviction under section 278. The section is directed against a public and not a private nuisance. This section may be read along with section 39, Penal Code.

(2) Using one's compound as an open latrine for the members of one's family was bound to give rise to obnoxious smell and was an offence under this section. *AIR 1953 Ajmer 4.*

(3) Where the risk to health of persons is limited to only the inmates of only one house or other limited class of individuals, the offence would only be a private nuisance and will not fall under this section nor under S. 268. *AIR 1929 Pat 113.*

(4) The throwing of a human skull in a highly offensive condition out of malice into a private dwelling house, is not an offence under this section. *AIR 1927 Pat 113.*

(5) The fact that after the accused had started using his open compound as a latrine for himself and members of his family other persons came and occupied property in the neighbourhood and began to complain of the obnoxious smell caused by the accused's open compound being used as a latrine by the members of his family, will not affect the character of the accused's act as an offence and would not be a defence to the charge of a public nuisance against him. *AIR 1953 Ajmer 4.*

(6) An offence under S. 268 read with S. 290 is a minor offence when compared with an offence under this section. Hence a person charged with an offence under this section may under S. 237, Criminal P.C., be convicted under S. 290, though he has not been separately charged with the latter offence. *AIR 1928 Oudh 402.*

2. Practice.—Evidence—Prove: (1) That the accused caused the atmosphere to be vitiated.

(2) That he did so voluntarily.

(3) That such vitiation was in its nature noxious to health.

(4) That it was noxious to the health of persons dwelling or carrying on business in the neighbourhood of the place, or passing along a public way.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you on or about the—day of—at—voluntarily vitiated the atmosphere at (name of place) so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way and thereby committed an offence punishable under section 278 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 279

279. Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to [5][three years, or with fine which may, subject to the minimum of one thousand taka, extend to five thousand taka], or with both.

[6][*Explanation.*—Any person driving any vehicle, or riding, on any public way, in a speed which exceeds the limit prescribed in this behalf by or under any law for the time being in force shall, for the purpose of this section, be deemed to have driven so rashly or negligently as to endanger human life, or cause hurt or injury to any other person.]

Cases and Materials: Synopsis

1. *Scope.*
2. *This section, Ss. 304A, 336, 337, 338 and other analogous and cognate provisions of law.*
3. *This section and provisions of Motor Vehicles Act.*
4. *This section and provisions of Police Acts.*
5. *This section and Section 101 of Railways Act.*
6. *Public way.*
7. *Negligent or rash driving or riding.*
8. *Contributory negligence.*
9. *So as to endanger human life or to be likely to cause hurt or injury to any other person.*
10. *Over-speeding.*
11. *Overtaking vehicle in front.*
12. *Driving on wrong side of road.*
13. *Illustrative cases.*
14. *Abetment of offence under the section.*
15. *Vicarious liability.*
16. *Evidence and burden of proof.*
17. *Procedure.*
18. *Sentence.*
19. *Practice.*
20. *Charge.*

1. Scope.—This section should be read along with sections 44 and 319, Penal Code. Under this section the effect of driving or riding must be either that human life was in fact endangered or that hurt or injury was likely to be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequence. In determining whether a person in negligent or rash the standard of reasonable care is that which is reasonably to be demanded in the circumstances. Merely because of slow speed of vehicle it cannot be said it was not rash driving. Negligence means breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate conduct of human affairs would do or the doing of something which a prudent

5. Subs. by Ord. X of 1982, s. 3 for the comma and certain words.
6. The explanation was added, *ibid.*

and reasonable man would not do. The test of negligent and rash driving is to see whether the accident in question would have been avoided by the accused if he exercised care and diligence which ordinarily cautious persons using the road in similar circumstances would have done. A person who is driving a motor vehicle should always keep it in a state of control sufficient to enable him to avoid dashing against any other vehicle or running into any passenger who may fall to step off the road and he is prima facie guilty of negligence if the vehicle leaves the road and dashes headlong and knocks against other users of the road. By the Criminal negligence in driving his bus on the wrong side at a speed which the circumstances existing at the time of the collision did not warrant by not keeping a proper lookout to avoid collision and by failing to apply the efficient brakes which he had in time and which braking would have averted the collision, the accused is plainly guilty of the offences under sections 304A, 304B and 279, Penal Code. The question as to what is the proper sentence to be awarded to the accused found guilty under sections 279, 304A and 304B, Penal Code, one has to consider whether the rash or negligent act of the accused showed callousness on the part of the accused as regards the risk to which he was exposing other persons and the severity of the sentence must depend to a great extent on the degree of callousness which is present in the conduct of the accused. Criminal negligence or criminal rashness is an important element in offences punishable under this section. In road accidents the court has to keep in mind the likelihood of error in judgment on the part of the person driving a motor vehicle as well as the pedestrian attempting to cross the road little realizing the great difference in his speed and that of the approaching motor vehicle. The burden of proving that the vehicle as being run rashly or negligently will be on the prosecution and particularly so when the vehicle hits a moving vehicle which might have contributed to the accident. When there has been an accident and the vehicle hits against the tree or culvert the presumption is that the accused was running the vehicle negligently, where there is a special statute, such as Motor Vehicles Act, which penalises rash driving of a motor, the punishment should be under such statute. The accused cannot be prosecuted under this section when once he is convicted under the Motor Vehicles Act for rash driving, but he can be prosecuted under section 338 of the Penal Code for the consequences of such rash driving *(29 CrLJ 271)*. The accused cannot be convicted under this section as well as section 338 *(49 CrLJ 759)*. Sections 279 and 338, Penal code deal with separate and distinct offences. There is no illegality in convicting and sentencing under both sections.

(2) Accused driving vehicle with defective brakes and gear—Accident taking place—Some passengers killed, while others inured—Offence falls under sections 304A, 279 and 338, and not under section 304 *(Ref. AIR 1940 Rang 176) PLD 1966 Lah 745.*

2. This section, Ss. 304A, 336, 337, 338 and other analogous and cognate provisions of law.—(1) The bare act of rash or negligent driving or riding, so as to endanger human life or to be likely to cause hurt or injury to any other person, is itself an offence under this section, although actually no one is injured or hurt. *AIR 1968 Goa* 77.

(2) The offence under this section and those under Ss. 304-A, 337 and 338 are distinct offences and an accused can be convicted both under this section as well as under SS. 304-A, 337 or 338 as the case may be. *AIR 1956 MadhB 141.*

(3) Where in respect of the same transaction an accused is charged both under Section 270 and S. 337 of the Penal Code and the latter offence is compounded and such compounding results in the acquittal of the accused of the offence under S. 337, P.C., it has been held that such acquittal would not affect the liability of the accused for the offence under S. 279 and would not be a bar to his trial for such offence. *AIR 1960 Bom 269.*

(4) To constitute an offence under S. 304A the rash and negligent act of the accused must be the direct and proximate cause of the death. *AIR 1936 Oudh 400.*

3. This section and provisions of Motor Vehicles Act.—(1) In cases of rash and negligent driving of a motor vehicle in a manner so as to endanger human life or to be likely to cause hurt or injury to another person, the offender can be tried either under the Motor Vehicles Act or under this section. *AIR 1967 Pat 368.*

(2) A trial and conviction or acquittal of a person under the Motor Vehicles Act, for rash and negligent driving so as to endanger human life will bar a fresh trial of the same person for an offence under this section. *AIR 1967 Pat 368(368, 369): 1967 CriLJ 1564.*

(3) It has been held that the conviction of a person for reckless driving under the Motor Vehicles Act will not bar his trial for an offence under S. 325 or S 338, Penal Code. *AIR 1928 All 191.*

(4) A conviction under S 121 of the Motor Vehicles Act (1939) (using vehicle in unsafe condition) is no bar to the conviction of the accused under this section. *AIR 1953 Pat 56.*

(5) Where, in addition to breach of rules rashness or negligence within the meaning of this section is proved, the proper section which will be more appropriate to apply will be this section. *AIR 1932 All 69.*

(6) Driving on the wrong side of the road is always and in every condition improper and not only under particular conditions, and where owing to such driving of a car a collision with a motor cycle occurs, the offence falls under this section and not under the Motor Vehicles Act. *AIR 1921 Sind 97.*

(7) Under S. 116 of the Motor Vehicles Act (1939) the manner of driving or the speed of driving the car must be dangerous to the public but under Schedule of the Motor Vehicles Act. Regulation 3, the offence of passing a tramcar on the left side is per se an offence though the tramcar may be stationary and although no danger may be caused to the public thereby. *AIR 1965 Cal 363.*

4. This section and provisions of Police Acts.—(1) The finding that the accused was not guilty under S. 34 of the Police Act (1861) necessarily means that the accused cannot be convicted under this section. This implies the proposition that the offence under Section 34 of the Police Act is substantially the same as the one under this section. *AIR 1925 All 448.*

5. This section and S. 101 of Railways Act.—(1) Section 101 of the Railways Act makes it an offence for a railway servant to endanger the safety of persons by (inter alia) any rash or negligent act. Under that section, it was held that the actual endangering of the safety of any person is necessary to constitute the offence and that the mere fact that the accused's act or omission was likely to endanger the safety of any person was not sufficient. *(1910) 11 CriLJ 362.*

6. "Public way."—(1) A distinction must be made between a public way and a private way, and it is only in the former case that this section will come into play. A public way connotes that the public have a right to use it and not merely a licence to do so. *(1822-1830) 108 ER 719.*

(2) A continued user of a way by the public for a long time raises a presumption that the way belongs to the public and that it has been dedicated by the owner for public use. *(1909) ILR 32 Mad 527.*

7. Negligent or rash driving or riding.—(1) Under this section what constitutes an offence is the rash or negligent driving of a vehicle or riding on a public way so as to endanger human life or be likely to cause hurt or injury to another person. *1975 CriLJ 1402 (Pat).*

(2) The hazard implied in the term rashness must be of such a degree that injury is most likely to be occasioned. The question whether the hazard was of such a degree as to make the accused's act criminally rash depends on the facts and circumstances of each case. *AIR 1966 Bom 122.*

(3) The negligence required under this section is of a higher degree than that required in a civil suit for damages, but of a lower degree than that required in a charge of manslaughter. *AIR 1948 PC 183.*

(4) In the absence of definite evidence to justify the conclusion that the driver of a motor car was drying in a rash and negligent manner, he cannot be convicted under this section or S. 304-A, 337 or 338 merely because his car collided with a lorry and caused injury to some persons. *AIR 1933 Oudh 391.*

(5) Motorists are not the only persons who owe a duty of care on a highway. Other persons using the highway have also a duty and responsibility and must conform to the ordinary usages of the road. *AIR 1934 Nag 65.*

(6) Where the people on the road do not move away quickly and the motor car, in spite of its slowing down as it approached the spot and stopping hits one of the persons the driver cannot be held guilty of rash or negligent driving. *AIR 1934 Nag 65.*

(7) Drivers of motor vehicles also must remember that pedestrians have a right to walk on the road and are entitled to expect that drivers of motor vehicles would exercise a reasonable amount of care when driving along the road. *AIR 1966 Bom 122.*

(8) It is the duty of the driver of a motor vehicle to keep his attention on the road and the traffic moving on the road. Where instead of doing so, he fixes his attention on a speeding train on a railway line running parallel to the road in order to keep pace with the train, with the result that he has suddenly to swerve to one side of the road in order to avoid hitting a bullock-cart coming from the opposite side and the car is overturned and persons in it are killed and grievously hurt the driver will be liable under S. 304-A. *AIR 1954 Trav Co 25.*

(9) Bus driver negotiating a bye-pass at high speed—Spring breaking as a result—Bus going out of control and dashing against a jeep—Driver held guilty of rash and negligent driver. *AIR 1971 Madh Pra 145.*

8. Contributory negligence.—(1) The doctrine of contributory negligence has no place in the criminal law and where a person is charged with the offence of causing an accident on a public road by rash or negligent driving of a vehicle on the road the fact that another person involved in the accident and killed or hurt therein, was partly responsible for the accident by his own negligence, will not be a defence to the charge. *1967 KerLJ 323.*

(2) Where the accident was caused by the fault of the deceased himself, who interfered in the management of the horse or the vehicle, the driver of the vehicle or the rider of the horse, as the case may be, will not be guilty. *1978 ChndLR (Cri) 139.*

(3) Where an Ekka driver was solely responsible for the collision between the Ekka and a motor car and was killed in the accident, the driver of the motor car, it was held, could to be held guilty. *AIR 1938 All 571.*

9. So as to endanger human life or to be likely to cause hurt or injury to any other person.—(1) Even where there was no person on the road at the time of the alleged rash driving or riding, the accused would be guilty. *AIR 1968 Goa 77.*

(2) The words "any other person" in the section are wide enough to include the occupants of the vehicle which is being rashly or negligently drived and are not limited to persons on the road. *AIR 1936 Oudh 148.*

(3) If there is no danger to the public outside the vehicle being rashly or negligently driven on the road this section will not apply. *AIR 1930 Sind 64.*

(4) Where hurt is actually caused to persons riding a bus as a consequence of rash and negligent driving by the driver, he would be guilty under S. 337. *AIR 1930 Sind 64.*

(5) Where a person has been convicted under S. 337, as he actually caused hurt to some of the occupants of the bus which he was driving it will not be necessary that he should be convicted under S. 279 also, even if it should be held that S. 279 is applicable to such cases. *AIR 1936 Oudh 148.*

(6) This section will apply even in cases where at the time of the rash or negligent driving or riding the road happens to be temporarily unoccupted by any pedestrian or by any vehicle this was so not only because any person or any vehicle may happen to arrive on the road at any time but also because the driver or the rider is to look to his own safety as well and cannot at all indulge in riding or driving which may endanger his own life. *AIR 1944 Lah 163.*

10. Over-speeding.—(1) it is difficult to estimate the speed of a car when the only source of evidence is the observation as the car passes along in the dark. One method of ascertaining the speed of the car would be to find out the distance at which the car pulled up from the time the brakes were applied. *AIR 1938 All 571.*

(2) On a straight and open road a speed of 25 or 30 miles an hour cannot necessarily be regarded as excessive. *AIR 1934 Nag 65(66):35 CriLJ 696——A 1933 Oudh 391.*

(3) Where a Pork Inspector's car was chasing another car suspected to contain illicit pork and both cars where going at a dangerous speed ignoring traffic signals with the result that finally the chased car crashed and the chasing car stopped at a distance of 100 feet from the crashed car, it was held that the driver of the chasing car was guilty under this section. *AIR 1938 Rang 97.*

11. Overtaking vehicle in front.—(1) The driver of a vehicle has to be very careful while attempting to overtake another vehicle that is proceeding in the same direction before him. If he tries to force his way between the vehicle proceeding in front and the car coming from opposite side his conduct would amount to reckless driving within the meaning of S. 116 of the M.V. Act. *AIR 1925 All 798.*

(2) The driver of a motor vehicle attempting to pass a car in front of him by going to the wrong side of the road and colliding with a vehicle on that side coming from the opposite direction, must be held to be guilty of rash and negligent driving. *AIR 1921 Bom 456.*

(3) Under the Schedules of the M.V. Act. Regulation 3, the offence of passing a tramcar on the left side is per se an offence, though the tramcar may be stationary and although there may be no danger to the public thereby caused and there is no question of any "reckless" driving within the meaning of S. 116 of the M.V. Act. *AIR 1965 Cal 363.*

12. Driving on wrong side of road.—(1) Not observing the rule of the road and not keeping to the left side of the road are prima facie evidence of negligent driving. *AIR 1954 Trav-Co 25.*

(2) Observing the rule of the road is not the only criterion as to negligence or otherwise on the part of the driver of a vehicle on a public highway. *AIR 1934 Nag 65.*

(3) Merely violating the rule of the road by going on the right side of the road instead of on the left side, does not prove rashness or negligence on the part of the driver in every case, although such breach of the rule of the road may itself amount to an offence under the M.V. Act and M.V. Rules. *AIR 1932 All 69.*

13. Illustrative Cases.—(1) Where the driver of a bus undertook to drive the bus in spite of the fact that its front tyres were defective and were in such a condition that they might burst on the way, it was held that the driver was guilty of a rash act and when the tyres actually burst on the road and the bus capsized resulting in injury to some persons and in the death of another person, the driver became guilty under S. 304-A. *AIR (1962) 4 Orissa JD 372.*

(2) The accused was driving a bus with defective brakes and other defects at such a high speed that when he made an attempt to apply the foot-brakes on being signaled to stop, he was completely unable to control it. Two of the wheels had already gone into the nullah by the side of the road. The bus after swerving to the right and to the left ultimately capsized on the road with the result that the body of the bus went to pieces. One of the passengers died then and there and one got his spine broken. Many others received other injuries. It was held that the accused was guilty of offences under Ss. 279, 338 and 304-A. *AIR 1958 Pat 56.*

(3) Where the driver of a bus allowed a minor to drive the bus, knowing that he did not know driving well and the minor drove the bus so rashly and negligently as to endanger the safety of passengers in the bus and an accident was caused in which several passengers were injured, it was held that the driver who was sitting by the side of the minor boy while the minor was driving, was guilty and was liable as a principal offender under the provisions of S. 114 of the Penal Code. *AIR 1951 Punj 418.*

(4) For a person to carry another person on the pillion of his bicycle while riding along a crowded street would be a rash and negligent act within the meaning of the section likely to cause injury to other persons using the road. *AIR 1940 Rang 176.*

(5) The accused was driving a motor lorry for a long distance continuously while he was feeling sleepy and being overcome by sleep lost control of the car adn caused an accident resulting in the death of persons in the lorry. It was held that an offence under S. 304-A was committed by the accused. *AIR 1965 All 196.*

(6) Where the driver of a bus drove past a stationary bus without leaving sufficient clearance to protect the passenger standing on the foot-board of the moving bus, it was held that the driver was guilty of rash and negligent driving. *AIR 1969 Delhi 183.*

(7) Where a person was sitting on a bridge 12ft. wide and a bus while crossing the bridge crushed the leg of that person, it was held that the accused driver was guilty of rash and negligent driving and in such case the speed of the vehicle was not material. *AIR 1982 MP 83.*

(8) If a cyclist is going by his left side on the unsurfaced portion of a road and a vehicle coming from behind: at high speed without blowing the horn dashed against the cyclist, held, accident was due to rash and negligent driving of the vehicle. *AIR 1977 Gauhati 55.*

(9) Bus being driven on a Kutcha track giving rise to jolts. Some loaded iron sheets alleged to have fallen down and injured a person on the track—No evidence that sheets fell down because of the high speed—Driver held not guilty under S. 279. *AIR 1972 SC 1485.*

14. Abetment of offence under the section.—(1) The mere fact that the owner or occupant of a car did not insist on the driver driving at a moderate pace, does not show that he instigated his driving at a reckless pace. *AIR 1938 Rang 97.*

15. Vicarious liability.—(1) The actual driver, and not the owner of a carriage, is liable under this section, in case of a collision with another vehicle and injury to another person arising out of the rash and negligent driving of the former vehicle. *(1870) 14 SuthWR Cr 32.*

16. Evidence and burden of proof.—(1) To prove an offence under S. 279 the prosecution is required to establish that (a) the accused was driving vehicle or was riding on a public way, and (b) such driving of vehicle or riding was in a manner so rash and negligent as to endanger human life and likely to cause hurt or injury to any other persons. *(1983) 24 DelhiLT 158.*

(2) The burden of proving rash or negligent driving (within the meaning of this section) on the part of the accused is on the prosecution especially in a case where there has been a collision with another carriage, which was also moving. The reason is that in such cases the driver of the other carriage may have also been negligent. *(1975) 41 CutLT 246.*

(3) Where the accused's vehicle dashed against a tree or a culvert, the presumption is that he was driving rashly or negligently, as in such a case, there can be no question of the negligence of the tree or the culvert. *AIR 1934 Mad 209.*

(4) The presumption of negligence on the part of a driver is a refutable one. *AIR 1934 Mad 209.*

(5) Rash and negligent driving cannot be assumed merely because of absence of explanation or false explanation set up by accused. *1982 CriLJ (NOC) 192 (Orissa).*

(6) Unless a passenger is conversant with driving it is difficult to rely on the evidence of such person to determine whether the bus was driven at a fast speed or otherwise. *(1983) 1 BomCR 307.*

(7) Persons injured in the accident are the best witnesses—Conviction can be based on their testimony if it inspires confidences. *1983 CurLJ (Civ & Cri)270.*

17. Procedure.—(1) Where there has been a collision between two vehicles and drivers of both the vehicles are charged with rash and negligent driving, there cannot be a joint trial of the two accused, as the act of each accused must be treated as being independent of the act of the other accused and that their offences cannot be regarded as having been committed in the course of the same transaction. *AIR 1963 Guj 275.*

(2) Where the Magistrate in the trial court induced the accused to plead guilty and assured him to let him off on a very lenient punishment and the State applied for enhancement of punishment it was held that such short cuts in case of serious offences impairs a fair trial. The case was remanded for fresh trial. *1980 CriLR (Guj) 415.*

(3) S. 130(1) of the M.V. Act, 1939 is not applicable to the case where offence complained is under this section. Hence, conviction of accused under this section on plea of guilty is illegal, if summons under S. 130(1) of M.V. Act had been issued in such a case. *AIR 1958 Mad 286.*

(4) Where in a case under Section 279, PC the persecution had deliberately not produced the evidence which was not only material but vital for the decisions of the case and the accused was acquitted of the charges under S. 279, P.C., the High Court in exercise or revisional powers set aside the acquittal in the interest of justice. *AIR 1980 Bom CR 324.*

(5) Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

18. Sentence.—(1) In cases coming under this section, the convicting Magistrate may, instead of sentencing the accused to any term of imprisonment, release him after due admonition. *AIR 1925 All 644.*

(2) Accused 33 years of age—First offender—No evidence adverse to his characters or antecedents—The accident and death of the child occurred while the accused driver was trying his best to save the child—Brakes of the involved bus were loose but it was given to him by the roadways department as road worthy—Held this was contributory factor towards minimising his sentence—Accused was released on probation under S. 4 of the Probation of Offenders Act. *AIR (1983) 1 Chand LR (Cri) 420.*

(3) Where because of the negligence of the accused, a driver, two persons died and the accident had taken place at peak hours of traffic and near the crossing where the accused-driver was required to be more careful, the accused could not be given the benefit of S. 360, Cr.P.C., though he had a large family to maintain and he was the only earning member. *(1983) 23 DelhiLT 484.*

(4) In accident cases, where criminal negligence or rashness on the part of the driver of a vehicle is proved, a sufficiently deterrent sentence within the limits of law is to be awarded, unless there are any extenuating circumstances. It is the duty of the Magistrate to take a serious view of such cases except where the circumstances justify a lighter sentence. A public road should be reasonably safe for pedestrians and others who use it. *AIR 1968 Goa 77.*

(5) In a prosecution of accused for offence under S. 279, it being the first offence of accused and having regard to his age and the manner in which the incident took place, sentence of fine only was awarded in the ends of justice. *1980 Bom CR 351.*

(6) Sentence of six months rigorous imprisonment and a fine of Rs. 200 for an offence under S. 279 was held not excessive or unjust. *1984 Raj CriC 82.*

19. Practice.—Evidence—Prove: (1) That the accused was driving a vehicle or that he was riding.

(2) That it is a public way on which he was driving or riding.

(3)That he was driving or riding in a rash or negligent manner.

(4)That the driving or riding was such as to endanger human life, or was such as to be likely to cause hurt or injury.

20. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—drove a vehicle (details of the car) or rode on a public way (name of the road) in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person and thereby committed an offence punishable under section 279 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 280

280. Rash navigation of vessel.—Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials

1. Scope.—This section will be attracted when navigation is performed in a rash and negligent manner. To support a conviction under the section the prosecution must prove the rashness or negligence which endangers human life or is likely to cause hurt or injury to any other person.

(2) The mere fact that the accused navigated the ship in an extremely slovenly manner will not attract the application of this section, unless it was proved that he navigated it in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person. *AIR 1925 Sind 284.*

(3) Where the boatmen accused, while navigating a boat met with accident resulting in death of many passengers, but no gross negligence and rashness on the part of the boatmen accused was established their conviction under S. 280 was unsustainable. *AIR 1982 AllLJ 498.*

(4) It is the primary duty of steam vessels to keep out of the way of vessels lying at anchor, and collision of a steam vessel with a vessel lying at anchor will, therefore, be prima facie evidence of negligence in the navigation of a steam vessel. *(1911) 12 CriLJ 582.*

(5) Where the person charged with an offence under this section, viz. the navigating of a vessel negligently so as to endanger the lives of the people sitting in the ferry boat, is acquitted of the offence on the finding that there was no negligence on his part, his master. viz. the owner of the boat cannot be convicted for the abetment of the offence. But where the boat sinks notwithstanding all the care of the boatman and the passengers are drowned, the owner of the boat (the master of the boatman) will be liable under S. 304-A for having plied the boat through his servant in such a negligent manner. *(1911) 12 CriLJ 495.*

(6) As under S. 279, under this section also, contributory negligence on the part of the victim, who is hurt or injured etc. or has been placed in a position of danger, is no defence to a charge, although such contributory negligence may be pleaded in mitigation of the sentence. *(1911) 12 CriLJ 362.*

20. Practice.—Evidence—Prove: (1) That it was a vessel which was being navigated.

(2) That the accused was navigating the same.

(3) That he was doing so in a rash or negligent manner.

(4) That the navigation was such as to endanger human life, or was such as to be likely to cause hurt or injury.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of, at— navigated a vessel—in a manner so rashly or negligently, as to endanger human life or to be likely to cause hurt or injury to another person and thereby committed an offence punishable under section 280, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 281

281. Exhibition of false light, mark or buoy.—Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead

any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Materials

1. Practice.—Evidence—Prove: (1) That the accused exhibited the light, mark or buoy in question.

(2) That such light, mark or buoy was false.

(3) That the accused did as in (1), intending or knowing that such false exhibition would be likely to mislead any navigator.

2. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

2. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—did exhibit a false light (or mark or buoy) when a certain vessel called—(if the name of the vessel is known it should be specified) was sailing (specify the place)—knowing or intending it to be likely that the exhibition of the said false light (or mark or buoy) would mislead the office in charge of the navigation of the said vessel and thereby committed an offence punishable under section 281 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 282

282. Conveying person by water for hire in unsafe or overloaded vessel.—Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials

1. Scope.—This section deals with conveying passengers by water for hire in unsafe and overloaded vessel. The word 'whoever' is wide enough to include boatman, a lessee of a ferry or the owner of a vessel.

(2) The section applies not only where the accused has done the act knowingly but also where he has acted negligently. *AIR 1950 Mad 300.*

(3) Criminal negligence is gross and culpable neglect or failure to exercise reasonable and proper care to guard against injury either to the public in general or to an individual in particular, which having regard to the circumstances out of which the charge has arisen, it was the imperative duty of the accused to have adopted. *AIR 1934 Cal 490.*

(4) The owner of the concerned boats, which carried terrific overloads thus endangering the safety of the passengers, lived near the starting place of the boats and he left everything to his tindals and only took the daily proceeds earned by such overloading. It was held that he was personally liable for the overloading, as he must be held guilty of negligence in leaving everything to his Tindals and allowing team to overload the boats in a dangerous manner. *AIR1950 Mad 300.*

(5) Overloading of a boat and leaving it in the middle of the stream in charge of only one boatman when the monsoon was in full swing, would amount to culpable negligence under this section. *AIR 1934 Cal 490.*

(6) Launch was capsized owing to over-rush of passengers waiting at the jetty on to the deck of the launch and not to overloading, held that capsizing was not due to the negligence of the owner or master of the launch. *AIR 1970 SC 1362.*

2. Practice.—Evidence—Prove: (1) That the accused conveyed a person for hire, or cause the same to be done.

(2) That the mode of conveying that person was, in a vessel, by water.

(3) That such vessel at the time was in such a state, or so loaded, as to be dangerous to the life of that person.

(4) That when such person was thus conveyed, the accused acted negligently or with a knowledge of the state of such vessel.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you on or about the—day of—at—knowingly or negligently conveyed or caused to be conveyed for hire—(name of the person) by water in the vessel (name of vessel) when the vessel was in such a state or so overloaded as to endanger the life of the said person and you have thereby committed an offence punishable under section 282 of the Penal Code and within my cognizance.

A I hereby direct that you be tried on the said charge.

Section 283

283. Danger or obstruction in public way or line of navigation.—Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred [4][taka].

Cases and Materials: Synopsis

1. *Scope and applicability of section.*
2. *This section and S. 268.*
3. *This section and S. 133, Criminal P.C.*
4. *"Act"—Meaning of.*
5. *Omission to take order with property in one's possession or charge.*
6. *Intention.*
7. *Negligence.*
8. *Actually causing danger etc., necessary for offence.*
9. *"Any person".*
10. *"Public way".*
11. *Navigable river, etc.—Obstruction on.*
12. *Encroachment on public way.*
13. *Nuisance caused by crowd—Person responsible.*
14. *Criminal trespass and obstruction of public way—Distinction.*
15. *Defences to charge under section; (e.g.) reasonable user of road by accused.*
16. *Benefit arising from public nuisance (S. 268, Para. 2).*

1. Scope and applicability of section.—This section may be read along with sections 22. 27, 32 and 279. This section refers to parties who do acts so as to cause danger, obstruction or injury to any person in any public way, or public line of navigation. All injuries to a public way, as by digging a ditch or making a hedge across it or laying logs of timber in it, or plugging it up or by doing any other act which will render it less commodious to the public will be punishable under this section. The obstruction may be caused by negligence *(36 CrLJ 893)*. Where a hut encroaches a highway the person who constructed the hut is liable. What is punishable under this section is not any act but an act which causes danger or injury to anyone. In a case under this section the prosecution must prove that the obstruction was caused under the authority or diction of the accused *(AIR 1921 All 192)*. A plain reading of section 283, Penal Code would show that the real gravemen of the offence lies on the accused acting or omitting to take order with any property in his possession or under his charge and thereby causing danger, obstruction or injury to any person in any public way, etc. This section can by no means be extended to a case where a party prohibits strangers from passing through its field, even though that may have been allowed access on earlier occasions.

(2) In order to attract the application of this section, there must be on the part of the accused an act or an omission to take order with certain property. In the absence of either of these factors, the mere fact that the accused prohibits strangers from passing through his fields will not be an offence although they may have been allowed access on previous occasions. *1969 CriLJ 77 (Delhi)*.

2. This section and S. 268.—(1) Pollution of the water of a canal so as to vitiate the atmosphere will fall under S 268 and not under the more particular S 277 as a canal is not a "public spring or reservoir" so as to attract the provisions of the special S. 277. *(1866) 6 QBD 631*.

3. This section and S. 133, Criminal P.C.—(1) A Magistrate passing an order under S 139 of the Criminal P.C., cannot do so simply relying upon a conviction of the person accused of the nuisance under this section in respect of the same matter but must follow the procedure laid down in S. 133 and the subsequent sections of the Criminal P.C. *(1096) 3 CriLJ 331*.

4. "Act"—Meaning of.—(1) Where the omission has nothing to do with any property it will not be an omission for the purpose of the section. Thus merely standing on a public road in a crowd, instead of moving away, will not constitute an offence under this section. *AIR 1957 Raj 64*.

5. Omission to take order with property in one's possession or charge.—(1) The omission to take order with any property in his possession or under his charge by the accused, thereby causing a public nuisance would be an offence where such omission is contrary to the law. *(1869) 20 LT (NS) 564*.

6. Intention.—(1) Where the accused placed a charpai on a public road and thereby obstructed a Sub-Inspector of Police while engaged in the discharge of his public duty. It was held that the accused was guilty of an offence under this section, although his act was purely negligent and not intentional. *AIR 1935 All 746*.

7. Negligence.—Under this section even a negligent act, which is done quite unintentionally, i.e. without any intention of causing obstruction etc., to any person will be an offence. *AIR 1935 All 746*.

8. Actually causing danger, etc., necessary for offence.—(1) Proof of actual injury, danger or obstruction to any person is necessary for an offence under this section. Mere proof of obstruction on a public way, without proof of any particular person being actually obstructed, will not be an offence under this section. *AIR 1925 Lah 153.*

9. "Any person".—(1) This section only applies where the danger, injury or obstruction is caused to a particular person. *AIR 1935 All 746.*

10. "Public way".—(1) A public way is one which the public have a legal right to use, while a public place would seem to include a place to which the public are accustomed to resort without being interfered with though there is no legal right to do so. *(1884) 14 QBD 66.*

(2) A cat-track lay in the patta land of the accused, who put up a wall across it and claimed a right to close it. It was held that the proper course would be to proceed against them under S. 133. Criminal P.C. but that they could not be convicted under this section. *AIR 1940 Mad 216.*

(3) A pathway lying on a private land and used by the villagers is not a public way, unless there is evidence of a universal user sufficient to raise a presumption of dedication to the public. *AIR 1930 Cal 286.*

(4) To establish a customary right of way, the court must be satisfied of the reason ableness and certainty of the user and that such user was not permissive nor exercised by stealth or force and that the right has been exercised for such length of time as to suggest that by agreement or otherwise, the usage has become the customary law of the particular locality. *AIR 1930 Cal 286.*

11. Navigable rider etc.—Obstruction on.—(1) Under this section danger, obstruction or injury caused to any person on a navigable river, stream etc., is also an offence. *(1874) 9 Ch App 423.*

12. Encroachment on public way.—(1) Though every person is entitled to use a highway, no one is entitled to use it in such a way as to exclude or obstruct other persons from exercising a similar right which they also have in regard to the highway. *(1909) 9 CriLJ 321.*

(2) The public have a right to use the whole of a public road including the sides, and encroachment or obstruction on the sides of a public road will also be a public nuisance. *AIR 1931 Bom 326.*

(3) The placing of a charpa, in the bazar temporarily, did not amount to a public nuisance in the circumstances of the case. *(1912) 13 CriLJ 830.*

(4) The placing of Maharram taboots in a line across a road by persons going in a Moharram procession, and obstructing the passage of a mail tonga was an offence under this section. *(1909) 9 CriLJ 321.*

13. Nuisance caused by crowd—Person responsible.—(1) Where crowd gathers in front of a shop and causes obstruction and danger on public road, but the crowd is attracted to that spot by the exhibition of certain toys in the shop window, the obstruction or danger must be held to have been caused by the owner of the shop and he must be held responsible therefor under this section. *(1911) 12 CriLJ 258.*

14. Criminal trespass and obstruction of public way—Distinction.—(1) Including a part of a public footpath in one's own land is not a criminal tespass. The reason is that in such a case, the accused, like any other member of the public is entitled to make use of the foot-path and there is no illegal entry on the property in the possession of another, with intent to commit an offence, etc., as

required by Section 441 of the Code. But in such a case the accused can be convicted of an offence under this section or S 268 read with S. 290. *(1870-71) 6 MadHCR xxvi.*

15. Defences to charge under section (e.g. reasonable user of road by accused).—(1) In case of doubt or difficulty, the private reasonable right of a house-holder to carry on his business will have to give way to the right of the public to use the road. *(1911) 12 CriLJ 258.*

(2) Where by exhibiting, certain clock-work toys in his shop window, the shop-keeper attracts a huge crowd in front of his shop on a public road and such crowd causes obstruction and danger to the members of the public using the road; the shop-keeper must be held responsible for such obstruction and danger. In such a case, it has been held that it cannot be said that the mode of user of the public road by the shop-keeper was necessary for carrying on his business in the sense that otherwise, it could not have been carried on in a reasonable way. *(1911) 12 CriLJ 258.*

(2) A person who is carrying a prabha in a processing along a public way and on being ordered by a Magistrate not to do so, leaves the prabha on the road then and there and walks away, so as necessarily to be likely to cause obstruction to any person who may have occasion to use the public way, cannot plead the Magistrate's order in defence to a charge of public nuisance or a charge under this section. *AIR 1916 Mad &47.*

16. Benefit arising from public nuisance (S. 268. Para. 2).—(1) Under S. 268. Para. 2, a common nuisance is not excused on the ground that it causes some convenience or advantage. But this provision may not be applicable to this section inasmuch as under this section the nuisance is not a common nuisance but one, which affects a particular person. In such cases, S. 81, which occurs in the Chapter on General Exceptions (Chapter IV), will apply. Under that section, as act done in good faith for the purpose of preventing or avoiding other harm to person or property, is not an offence. *AIR 1940 Pat 577.*

17. Order to remove nuisance—Non-compliance with.—(1) The order of a public authority legally competent to pass such order, requiring the removal of a nuisance must be carried out by the accused otherwise he may become liable under Section 188 or Section 291 of the Code. *(1897) ILR 20 Mad 1.*

18. Person liable under the section.—(1) Where A constructs a hut on the side of a public road and encroaching upon it and B hires the hut and exposes goods for sale therein, it is A that will be liable for obstruction under this section, or under Section 268 and not B, who merely exhibits goods for sale in the hut taken on hire by him. *(1908) 1 CriLJ 244(Cal).*

19. Vicarious liability.—(1) Under this section the prosecution must prove that the obstruction to a public way charged against the accused, was caused under the authority or direction of the accused. *AIR 1921 All 192.*

(2) Where building materials were supplied by the contractor, who placed them on the public road, the person for whom they were supplied, could not be convicted under this section unless he had sanctioned the act. *AIR 1921 All 192.*

20. Compensation to complainant.—(1) Section 357 of the Criminal P.C. provides for the payment of compensation to the complainant out of the fine imposed upon an accused person in a criminal case. But where a person is accused of an offence under this section and is convicted and sentenced to a fine the complainant cannot be awarded compensation for the expense incurred by him in removing the obstruction caused by the accused. *1886 Rat Un Cri C 241.*

21. Procedure.—(1) Trial of this offence by Panchayat in contravention of Panchayat Rules is void. *1969 CriLJ 77 (Delhi).*

(2) Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

22. Practice.—Evidence—Prove: (1) That the accused caused the danger, obstruction or injury in question.

(2) That the same was caused by his act, or omission, to take order with property in his possession or under his charge.

(3) That the person put in danger, or obstructed, or injured, was then in a public way or public line of navigation.

23. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—did (specify that act) or omitted to take order with—(name of the property) in your possession or under your charge and thereby caused danger, obstruction or injury to (name the person) in the public way (name of the public way) or the public line of navigation (name of the line) and thereby committed an offence punishable under section 283 of the Penal Code and within my congnizance.

And I hereby direct that you be tried on the said charge.

Section 284

284. Negligent conduct with respect to poisonous substance.—Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand [4][taka], or with both.

Cases and Materials

1. Scope.—(1) This section may be read along with sections 27, 32, 44, 279, 283 and 319. The gist of the offence under this section is culpable negligence and where a person is in possession of poisonous substances, imposes upon him the duty of being careful.

(2) The gist of the offence in all these cases is culpable negligence in regard to the matters mentioned in each section. *1882 Pun Re No. 16 p. 19.*

(3) The fact that a person has in his custody any dangerous substance, like poison, is it self sufficient to impose on him the duty of being careful. *1882 Pun Re No. 16. P. 19.*

2. Practice.—Evidence—Prove: (1) That the substance in question is poisonous, and if taken, would be dangerous to life or likely to cause hurt or injury.

2) That the accused did an act therewith, which endangered, or was likely to endanger, human life or was likely to cause hurt or injury.

(3) That he did such act rashly or negligently.

Or, Prove: (1) That the substance in question is poisonous, and if taken, would be dangerous to life, or to cause hurt or injury.

(2) That the accused was in possession of such substance.

(3) That he omitted to take such order therewith as was sufficient to guard against a probable danger to human life therefrom.

(4) That such omission was negligent, or with a knowledge of such probable danger.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—did (name of the act) with (name of the poisonous substance) in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to (name of the person) or that you being in possession of such poisonous substance knowingly or negligently omitted to take such order as is sufficient to guard against the probable danger to human life from any such poisonous substance and thereby committed an offence punishable under section 284 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 285

285. Negligent conduct with respect to fire or combustible matter.—Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials

1. Scope.—(1) Combustible matter is matter which is inflammable or capable of catching fire. It includes fireworks, or fluids naphtha. The word 'injury' includes any harm illegally caused to the property of any other person and is not confined to injury to the person only. The proximity of naked fire with stocks or turpentine is a source of danger to human life. The preventive sections are 133 and 144 CrPC. This section may be read along with sections 27, 32, 44, 279, 283, 286 and 319, Penal Code.

(2) It is a question of fact in each case, whether the keeping, depositing and manufacturing of inflammable substances like naphtha does create danger to human life and property, and the question must depend upon the circumstances of each case, as it is primarily a question of degree. *7 Cox CrC 342.*

(3) Under S. 435, the act constituting the offence is a willful act, while under this section the conduct of the accused is not willful but only rash or negligent. Where an accused is charted with an offence under Section 435, he may under Section 221 of the Criminal Procedure Code be convicted of the lesser offence under this section. *(1966) 1 MadLJ 385(386).*

(4) Section 34 cannot be invoked in cases falling under this section, as there can be no question of common intention in such a case, as required by S. 34, between the several persons alleged to have joined in the commission of the offence. *(1966) 1 MadLJ 385(386).*

(5) Under second para of this section, the position must be such that the accused's failure to take order must make danger to human life from the fire or combustible matter "probable". It is not enough if such danger is merely possible. *AIR 1965 SC 1616.*

(6) Where the position is such that danger was probable, the mere fact actually no fire had broken out earlier is no proof that danger was not probable. *AIR 1965 SC 1616.*

2. Practice.—Evidence—Prove: (1) That the accused did an act that endangered, or was likely to endanger life or was likely to cause hurt or injury.

(2) That such act was done with fire or some combustible matter.

(3) That such act was done rashly or negligently.

Or, Prove: (1) That the accused had in his possession some fire or combustible matter.

(2) That he omitted to take such order therewith, as was sufficient to guard against a probable danger to human life therefrom.

(3) That such omission was negligent or with knowledge of such probable danger.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—did (enumerate the act) with fire (or any combustible matter) (name it) so rashly or negligently as to endanger human life or likely to cause hurt or injury to or that you being in possession of such fire or other combustible matter knowingly or negligently omitted to take such order as is sufficient to guard against the probable danger to human life from any such fire or other combustible material and thereby committed an offence punishable under section 285 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 286

286. Negligent conduct with respect to explosive substance.—Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials

1. Scope.—(1) Where the rash or negligent act of the accused in handling any explosive substance results in hurt or grievous hurt to another person. the offence will fall under S. 337 or S. 338 (as the case may be) and not under this section. *(1906) 3 CriLJ 363.*

(2) Firing a loaded gun in a narrow passage of a small building with rooms on both side, of which the doors are open is a rash and negligent act done with an explosive substance so as to endanger human life and is an offence under this section. *AIR 1949 Bom 29(30): 49 CriLJ 593 (DB).*

(3) The accused went out shooting in the month of July when people were likely to be about in the fields and that a single pellet from his gun lodged itself in the thigh of a person who was at work in the field. It was held that this was not sufficient evidence of rashness or negligence to support a conviction under S. 337. *(1906) 3 CriLJ 363 (All).*

(4) Where the offence under S. 286 was not mentioned in the charge but the Judge in his summing up to the jury referred to that offence at length and the jury gave their verdict convicting the accused of that offence. It was held that the conviction could not be set aside under S. 537(b), Criminal P.C. as there was no prejudice to the accused and no miscarriage of justice. *AIR 1949 Bom 20.*

3. Practice.—Evidence—Prove: (1) That the accused did an act with an explosive substance.

(2) That the said act was so rash or negligent as to endanger human life or likely to cause hurt or injury.

(3) That the accused was in possession of an explosive substance.

(4) That there was probable danger to human life from possession of such explosive substance.

(5) That he knowingly or negligently omitted to take such order with it as is sufficient to guard against any probable danger to human life from such explosive matter.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I. (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—did (enumerate that act) with an explosive substance (name it) so rashly or negligently as to endanger human life or likely to cause hurt or injury to (name of the person injured) or that you being in possession of (name the explosive substance) omitted to take such order as is sufficient to guard against the probable danger to human life from any such explosive substance and thereby committed an offence punishable under section 286, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 287

287. Negligent conduct with respect to machinery.—Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials: Synopsis

1. *Scope.*
2. *This Section and Section 304A.*
3. *"Machinery".*
4. *Dangerous machinery.*
5. *Doing an act rashly or negligently.*
6. *Contributory negligence.*
7. *Endanger human life.*
8. *Probable danger*
9. *Practice.*
10. *Procedure.*
11. *Charge.*

1. Scope.—The section deals with negligent conduct in respect of machinery. An owner of machinery is criminally liable if he compels his servants to work it in an unsafe condition knowing it to be so, in a manner likely to endanger human life. This section may be read along with sections 32, 44, 279, 283, 286 and 319 of this Code.

2. This section and Section 304A.—(1) To constitute an offence under this section, it is not necessary that death, hurt or grievous hurt must be actually caused by the rash or negligent conduct of the accused. Where death, hurt or grievous hurt are actually caused by the rash or negligent conduct. S. 304A or 337 or 338 as the case may be will apply. *AIR 1930 Lah 453.*

(2) S. 304A will apply to a case of causing death by a rash or negligent act only where it is proved that the death is the direct consequence of the rash or negligent act of the accused. *AIR 1930 Lah 453.*

3. "Machinery".—(1) The word "machinery" in this section would include a part of the machine. *(1897) 1. QB 192.*

4. Dangerous machinery.—(1) Machinery or parts of machinery would be dangerous if in the ordinary course of human affairs danger may reasonably be anticipated from the use of them without adequate protection. *(1887) 1 QB 192.*

(2) In considering whether a machinery is dangerous the contingency of carelessness on the part of the workmen in charge of it and the frequency with which that contingency is likely to occur, are matters that must be taken into consideration by the Court. *(1897) 1 QB 192(195).*

5. Doing an act rashly or negligently.—(1) The rashness and negligence contemplated by this section is criminal rashness and negligence. Simple lack of care may constitute civil liability. *1970 KerLT 828.*

(2) There is a distinction between the meaning of "rashness" and that of "negligence" under this section and analogous provisions like S. 279. In the case of negligence, the party fails to do an act

which he was bound to do, because of inadvertence. In the case of rashness, the part does an act from which he was bound to forbear and breaks a negative duty. In rashness, the party runs a risk of which he is conscious. *AIR 1944 Lah 163.*

(3) Where there is actual danger to life occasioned by the rash or negligent act of the accused is a question of fact depending on circumstances of each case. Thus, working boilers at an unsafe pressure would be an offence under this section; but where the boilers are worked within the limits of safe pressure, no offence would be committed. *(1906) 4 CriLJ 279.*

(4) Where a person owning machinery employs a competent man and leaves him free to work it in the best manner according to his judgment, the owner cannot be held responsible for any accident due to the errors of the employee, as in such a case the owner cannot be held to have acted in a rash or negligent manner with regard to the machinery. *(1906) 4 CriLJ 279.*

(5) Where the owner of a boiler discards employees who contend for safety, and seeks out one who although technically competent, agrees to take the risk in working a boiler of a pressure which the discarded employees considered unsafe, the employer cannot take shelter behind the employee. *(1906) 4 CriLJ 279.*

6. Contributory negligence.—(1) Contributory negligence is not a valid defence to a charge under this section or S. 304A. *1977 KerLT 828.*

7. Endanger human life.—(1) The expression "to endanger human life" in para. 1 of this section does not imply that death or hurt should have actually been caused. Where the act or omission on the part of the accused is so risky as to make such result likely, the act or omission must be held to fall under this section. *(1906) 4 CriLJ 279.*

8. "Probable danger".—(1) All that is required by this section is that the person must take reasonable precaution and as much care as is sufficient against such danger as can be expected within the bounds of probability. *AIR 1930 Pat 507.*

9. Practice.—Evidence—Prove: (1) That the accused did an act that endangered, or was likely to endanger life, or was likely to cause hurt or injury.

(2) That such act was done with a machinery.

(3) That such act was done so rashly or negligently.

Or, Prove: (1) That the accused had in his possession or under his care some machinery.

(2) That the omitted to take such order therewith as was sufficient to guard against a probable danger to human life therefrom.

(3) That such omission was negligent or with knowledge of such probable danger.

10. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

11. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—acted with (name of the machinery) so rashly and negligently as to endanger human life or to be likely to cause hurt or injury to (name of the person) or knowingly or negligently omitted to take such order with the—in your possession as is sufficient to guard against any probable danger to human life from such machinery (name of the machinery) and thereby committed an offence punishable under section 287, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 288

288. Negligent conduct with respect to pulling down or repairing buildings.—Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials

1. Scope.—The requirement of this section is that a person must knowingly or negligently omit to take the necessary order with the building in pulling it down or repairing it. It is not sufficient that an injury is caused while the building is being pulled down or repaired. In other words, the injury must be the direct consequence of the building being pulled down or repaired. What the section further requires is that the accused must knowingly or negligently omit to take such order with the building as is sufficient to guard against a probable danger to human life "from the fall of that building or any part thereof". This makes it clear that the injury complained of must be the consequence of the fall of the building or any part thereof. A worker throwing a brick negligently may be responsible for his rash or negligent act but a contractor who has engaged a worker in a work of construction cannot be held guilty of omitting to take such order as is sufficient to guard against a probable danger to human life form the fall of a building or of any part thereof if the injury is caused not because the building or a part of it fell but because the worker threw a brick carelessly *(1970 Bom LR 629)*.

(2) The basic condition for the applicability of the section is that the accused's negligent conduct must be in respect of the pulling down or repairing of a building *(1904) 1 CriLJ 488*.

(3) In order to attract this section the injury caused to the victim must be the direct consequence of the pulling down or repairing of the building. *(1970) 72 Bom LR 629*.

(4) The section will not apply to a faulty construction of a building which collapses and causes injury. The matter may come under S. 337. *AIR 1970 Mad 198*.

2. Practice.—Evidence—Prove: (1) That the accused was pulling down or repairing a building.

(2) That he omitted to take sufficient order therewith to guard against a probable danger or the fall thereof, or any part thereof.

(3) That such omission was negligent or with knowledge of such probable danger.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—while pulling down or repairing a building knowingly did not take sufficient guard against danger to human life as a result—(name of the person) fell from the aforesaid building or any part thereof and sustained injury and you have thereby committed an offence punishable under section 288, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 289

289. Negligent conduct with respect to animal.—Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [4][taka], or with both.

Cases and Materials: Synopsis

1. *Scope.*
2. *"Knowingly or negligently omits to take such order ...."*
3. *"Any animal".*
4. *"In his possession".*
5. *"Probable danger to human life or probable danger of grievous hurt".*
6. *Evidence and proof.*
7. *Procedure.*
8. *Practice.*
9. *Charge.*

1. "Scope.—This section deals with improper or careless management of animals. Any negligence in the management of an animal is not criminal. What has to be shown is that the accused was so negligent that he did not take sufficient precaution to guard against probable danger to human life or grievous hurt from such animal. Where owing to the negligence of its owner a dog bit the complainant in his arm this section was held to apply *(25 CrLJ 565)*. If the animal is not naturally fierce or vicious the onus of proving negligence lies on prosecution.

2. "Knowingly or negligently omits to take such order .....".—(1) The section describes the offence as an omission to take order with an animal in one's possession under the circumstances mentioned therein. But, such omission will not be an offence under the section in every case. It will have to be proved that the accused knowingly or negligently omitted to take order with an animal in his possession, so as to endanger the safety of other persons. In other words, the omission to take order with an animal must be an omission of which the accused is guilty "knowingly or negligent". *(1900-1902) I Low Bur Rul 208 (209)—(1866) 5 Suth WR (Letters)8.*

(2) It must be clear from the evidence that the omission to take order with the animal in the accused's possession was such as to make it probable that there would be danger to human life or danger of grievous hurt to another person thereby caused. Unless these ingredients are established the accused cannot be convicted under this section. *(1900-1902) I Low Bur Rul 208.*

(3) The word "negligently" imports that the accused has failed to do something which he was bound to do. *(1963) 11 WR(Eng) 435 (436).*

(4) Where the accused tethered his horse in a narrow street where people would not be able to pass without going near its hind legs and the complainant was kicked by the horse an injured, it was held that the accused was guilty of and offence under this section. *AIR 1940 Sind 172.*

(5) The mere fact that a rope tied to a bull-lock when violently strained, broke, does not prove negligence in taking order with the animal on the part of the person who was responsible for the animal. *(1904) 1 CriLJ 1059 (All).*

3. "Any animal".—(1) This section visualises the possibility of danger emanating from any animal and hence is applicable to any animal and not merely to wild animals or animals which are ferocious by nature. *(1873) 19 SuthWR (Cr) 1.*

(2) Where the animals are dangerous by nature and they are set at large, the presumption is that they will cause injury to human beings and the person, who was in charge of the animal and who so set them at large, would be guilty of an offence under this section. *AIR 1918 All 369.*

(3) Where the animal is not by nature a dangerous one, as for instance a dog, cow or other domestic animal, there is no presumption that the animal would be dangerous and in such a case, merely allowing the animal to be at large or some laxity in its management will not per se amount to an offence under this section. It must be shown that the animal has a tendency to be vicious. *AIR 1918 All 369.*

(4) Even in the case of an animal like a langur (ape), it has been held that there is no presumption of its being dangerous and that in the absence of affirmative proof of danger to the safety of human being, the mere fact that the langur had broken its chain and run away and caused damage to street lights, flower pots etc., would not be sufficient to convict the owner of an offence under this section. In such cases, the fact that there was no proof of the animal being not dangerous to the safety of human beings, is beside the point. There must be positive affirmative proof of the animal being dangerous. *(1904) 1 CriLJ 1059 (All).*

(5) Where a domestic animal like a horse, pony, dog. etc., is known to be vicious it must be treated on the same footing as an animal which is dangerous by nature and in such cases if the animal will be at large, the owner or the person responsible for keeping the animal will be liable under this section on the ground of the mere fact of the animal having been allowed to be at large. *1955 NagLJ 20.*

(6) Where the accused let loose his bull, which had on a previous occasion fought with the complainant's bull, it must be held that the bull was of a dangerous character and that the accused knowingly omitted to keep the bull securely and thereby committed an offence under this section. *AIR 1916 Bom 196.*

4. "In his possession".—(1) In order that a person may be held guilty under this section, it is necessary that his negligent conduct, namely, his omission to take proper order with an animal must be with regard to an animal in his possession. But the possession may be actual or constructive. Thus, where a buffalo, known to be dangerous, injured a person, it was held that not only the herdsman in charge of the animal, who failed to take any steps to prevent the injury, but also the owner of the animal who took no special precautions regarding the animal would be liable under this section. *(1907) 6 CriLJ 100 (Nag).*

(2) A bull set at large by a Hindu in accordance with religious practice cannot be said to be in the possession of the former owner, and if it subsequently proves to be dangerous to the safety of other persons, such owner cannot be held guilty of an offence under this section. *(1904) 1 CriLJ 501 (Lah).*

5. "Probable danger to human life or probable danger of grievous hurt".—(1) If danger to human life or danger of grievous hurt is not probable as a consequence of the accused's negligence or omission, this section will not apply. But mere probability of danger to life or danger of grievous hurt is enough to attract the operation of this section. Actual loss of life or actual grievous hurt is not a necessary ingredient of the offence under this section. *(1888) 11 MysLR No. 357 p. 173.*

(2) Even in a case where only simple hurt is actually caused by the animal in accused's possession, it may be held, in the circumstances of a particular case, that there was probability of the danger of grievous hurt being caused to another person and that the accused had committed an offence under this section. *AIR 1923 Rang 147.*

(3) Where an accused was prosecuted under this section for having let his dog at large but there was no proof of any tendency of the dog to bite a human being it was held that the accused was not liable. *AIR 1918 All 369.*

(4) Risk of damage to property is also not covered by the section. *(1904) 1 CriLJ 1059 (All).*

6. Evidence and proof.—(1) Where the accused's ape broke its chain and escaped and broke some flower-pots and some street lights, it was held that the accused could not be convicted under this section merely on these facts, as they did not establish affirmatively that the animal was dangerous to human beings. The mere fact that its was not shown that the animal was not dangerous will not be sufficient to convict the accused. *(1904)1 CriLJ 1059 (All).*

7. Procedure.—(1) The offence under this section, not being one punishable with imprisonment for a term exceeding two years, is triable summarily under S. 260 (1) © (l) of the Criminal P.C., but the record must show in case of conviction that the facts proved were sufficient to constitute the offence under this section. *(1900-1902) 1 Low Bur Rul 208.*

(2) Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

8. Practice.—Evidence—Prove: (1) That the animal was in the possession of the accused.

(2) That he omitted to take sufficient order therewith to guard against probable danger to human life or of grievous hurt therefrom.

(3) That such omission was negligent, or with knowledge of such probable danger.

9. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—knowingly or negligently omitted to take such order with (name and description of the animal) in your possession as was sufficient to guard against any probable danger to human life or any probable danger of grievous hurt and you have thereby committed an offence punishable under section 289, Penal code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 290

290. Punishment for public nuisance in cases not otherwise provided for.— Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred [4][taka].

Cases and Materials

1. Scope.—This section may be read along with sections 74 to 76 of the Dhaka Metropolitan Police Ordinance, 1976, and sections 76 to 78 of the Chittagong Metropolitan Police Ordinance, 1978 and Khulna Metropolitan Police Ordinance, 1985, Rajshahi Metropolitan Police Ordinance 1992. Public nuisance may be undoubtedly caused without any deliberate intention of causing it and this section does not refer to the intention of the accused person (*AIR 1935 All 74).* The mere act of gambling in a private house is not a public nuisance. But where a person permits crowds of disorderly persons to make use of his house for gambling and his doing so have caused annoyance to the public, he is guilty of an offence under section 290. An offence under section 290 is not cognizable and so a police officer is not at all justified in carrying out an investigation without an order of a Magistrate of

the first or second class having power to try the case under section 156, CrPC. If cognizance is taken by the Magistrate on the report for prosecution after investigation by a police officer without order from the competent Magistrate, the entire proceedings will be vitiated. The fact that there was a special law to meet a particular offence does not prevent the punishment of the offenders under the Penal Code. The accused should be given an opportunity to meet the charge *(27 CrLJ 152)*.

(2) The essential elements of an offence under this section are different from the elements of an offence under S. 323 of the Code. Hence a person charged under S. 290 cannot be convicted under S. 323 unless the accused is given notice of the charge under the latter section. *(1970) 1 MadLJ 242.*

(3) A municipality can be made liable for an offence under this section. *1973 CriLJ 1227.*

(4) In the following cases the act was held punishable under this section:—

(a) Allowing a prickly pear to spread on to a road used by the public. *AIR 1928 Mad 1235.*

(b) Working of a paddy husking machine at night. *AIR 1919 Cal 539.*

(c) 'Prabha' was left on the road which was only three yards wide and the 'prabha' occupying two yards of it. *AIR 1916 Mad 847.*

(d) Working a rice-husking machine at night in a residential quarter of a city. *(1904) 1 CriLJ 512.*

(e) Letting loose cattle at night. *(1892) 1 Weir 238(239).*

(5) In the following cases the act was held not punishable under this section:—

(a) A person who was regularly parking his car near the house of 'A' from 20.30 hrs. And kept it there till late in the night does not commit any offence under S. 290.*1979 BBCJ 743.*

(b) Coal depot in existence for 7 to 8 years—Only two neighbours complaining of nuisance against depot—It is not public nuisance but private one. *1977 CriLJ (NOC) 279.*

(c) Working of motor cycle engine emitting noise for a short period. *(1984) 1 APLJ 239.*

(6) Section 360(3), Criminal P.C. covers offences punishable with fine only and hence an accused convicted under this section can be released with admonition by the Magistrate acting under S. 360(3). Criminal P.C. *AIR 1935 Bom 156.*

(7) Offence under section 290 of the Penal Code being a non-cognizable one the proceeding initiated on police report without the permission of the Magistrate as required under section 155(2) CrPC is illegal. The Court can, in a given case, regard the police report as a report under section 190(1)(b) CrPC and take cognizance on that police report but a completed investigation conducted without prior permission the proceeding on the basis of the said report would be an illegality *(Ref. 10 DLR 152 Dhaka) 41 DLR 306.*

(8) Police officer is not justified in carrying out investigation of complaint without sanction of competent Magistrate. An offence under section 290, Penal Code is not cognizable and so a police officer is not at all justified in carrying out an investigation without an order of a Magistrate of first or second class having power to try the case *(Ref. 16 DLR 528) PLD 1961 Lah 882.*

(9) The annoyance of a few residents of a single house is not sufficient to constitute a public nuisance as contemplated by section 290 of the Penal Code. It is not sufficient proof under that section to say that the complainant and a few of his tenants represent the people in general who occupy property in the vicinity, there being no other dwelling within unpleasant range. Before an act is found to be a nuisance, inquiry by the Commissioners is mandatory. Magistrate acts as a court when passing

an order under this section and therefore, such an order is open to the High Court's revisional jurisdiction. *10 DLR 206.*

2. Practice.—Evidence—Prove: (1) That the accused did an act or was guilty of an illegal omission.

(2) That such act or omission caused injury, danger, or annoyance.

(3) That such injury, danger, or annoyance was common to the public or the people in general who dwell or occupy property in the vicinity.

Or, Prove: (1) That the accused did an act or was guilty of an illegal omission.

(2) That the act or omission in question must necessarily cause injury, obstruction, danger, or annoyance.

(3) That such injury, danger, or annoyance must necessarily be caused to persons who may have occasion to use any public right.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—committed (name and description of the public nuisance) and thereby committed an offence punishable under section 290 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 291

291. Continuance of nuisance after injunction to discontinue.—Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Cases and Materials

1. Scope.—(1) This section punishes a person continuing a nuisance after he is enjoined by a public servant not to repeat or continue it.

(2) This section as well as S. 143 of the Criminal P.C. contemplates a case in which an accused has previously been guilty of a public nuisance and is ordered by one of the Magistrate mentioned in S. 143 of the Criminal P.C. not to repeat or continue the public nuisance. *(1886) ILR 8 All 99.*

(3) Where an order under S. 143, Criminal P.C. is not directed to any particular individual but addressed to the public in general as in the case of an order under S. 144 of the Criminal P.C., non-compliance with the order will not be an offence under this section but will be an offence under S. 188 of the Penal Code. *(1886) ILR 8 All 99.*

(4) The distinction between an offence under S. 188 and one under this section is of material importance, because, if the offence falls under S. 188 the case will be governed by S. 195(1)of the Criminal P.C. and no Court can take cognizance of the offence except on the complaint in writing of

the public servant concerned, or some other public servant to whom he is subordinate. *AIR 1930 Lah 1065.*

2. Practice.—Evidence—Prove: (1) That there was the issue of the injunction.

(2) That such injunction was legally issued.

(3) That the injunction is one which restrains the repetition or continuance of a public nuisance.

(4) That the accused as enjoined by such injunction not to repeat or continue such nuisance.

(5) That he has repeated or continued the same public nuisance.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—repeated or continued (name the public nuisance in details) having been enjoined by (name and office of the public servant) who had lawfully issued the said order of the injunction not to repeat or continue the same and thereby committed an offence punishable under section 291, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 292

[7][**292. Sale, etc. of obscene books, etc.**—Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

7. Substituted by the Obscene Publications Act, 1925 (Act VIII of 1925), s. 2 for the original section 292.

Exception.—This section does not extend to any book, pamphlet, writing, drawing or painting kept or used *bona fide* for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]

Cases and Materials: Synopsis

1. *Scope of the section.*
2. *Constitutional validity of the section.*
3. *Obscenity, what constitutes.*
4. *"Puts into circulation".*
5. *Exception—Works of religion, art, literature, etc.*
6. *Exhibition of film passed by Board of Censors.*
7. *"Makes, products".*
8. *Who is liable.*
9. *Punishment.*
10. *Charge—What it should contain.*
11. *Evidence.*
12. *Procedure.*
13. *Practice.*

1. Scope of the section.—The word 'obscene' has not been defined in the Penal Code. It should be given its ordinary and literary meaning. The word obscene is not vague. It is a word, which is well understood even if persons differ in their attitude as to what is obscene and what is not. Obscenity denotes the quantity of being obscene which means offensive to modesty or decency, filthy and repulsive. In the present day society in Bangladesh where great emphasis is laid in family planning necessitating imparting of sex education in the manner the books dealing with sex matters are to be so written as not to cross the boundary of decency. To sustain a conviction under this section, the prosecution has to prove that the book is obscene and it is not sufficient to prove that it is indecent and that the leniency of the book is to deprave and not merely to shock or to disgust. Where a person is prosecuted under section 292 no doubt it is better to indicate in the charge in what respect exactly the book is obscene. But if the accused is not prejudiced in his defence and the prosecution maintains that the whole book is obscene, mere failure to mention particular passages is not a sufficient reason to interfere in revision.

(2) The petitioners sold nude photographs of women. He contended that photographs were not obscene. Artists, professors, physicians and surgeons of some repute who appeared as witnesses deposed that the photographs were not obscene but made artistic exposition of the beauty of the human body. Held: 'Obscenity' consists of publishing or exhibiting such matter or object which has the tendency to corrupt the mind of those who are open to immoral influence by exciting in them sexuality and carnal desire. *Yaqub Beg. Vs. State (1960) 12 DLR (WP)45.*

(3) In determining whether a certain picture or writing is or is not obscene, it would not do to apply test of an artist; the mere fact that a picture is perfect in its technique and depicts the beauty of human body does not exclude it from the definition of obscenity. *Yaqub Beg. Vs. State (1960) 12 DLR (WP)45.*

(4) A mind open to immoral influence does not mean an abnormal case of a person who is easily excited sexually or whose mind is perverse but means the case of a normal person, particularly a youth whose mind has not reached such a stage of artistic maturity that he would be completely impervious to such exposition so long as it has certain artistic value. *Yaqub Beg. Vs. State (1960) 12 DLR (WP)45.*

(5) In order to determine whether a picture of writing is obscene or not, it would also be necessary to see the prevailing normal standards and conditions of the society in which such an object is circulated or is likely to be seen or read. *Yaqub Beg. Vs. State (1960) 12 DLR (WP) 45.*

(6) Even in a so-called liberal society the exposing of the female form with all the nakedness of the flesh would not fail to have an immoral influence in some measure upon the normal members of such a society. *Yaqub Beg. Vs. State (1960) 12 DLR (WP) 45.*

(7) Obscene, test of—Obscenity to be determined with reference to standards current in society in which words are uttered or published—Intention of author immaterial. *Crown Vs. Hossain 2 PCR 279.*

2. Constitutional validity of the section.—(1) The validity of this section was questioned under Art. 19(1)(a) of the Indian Constitution but has been upheld by the Supreme Court as being a restriction imposed in the interests of public decency and morality and hence covered by clause (2) of Art. 19. *AIR 1965 SC 881.*

3. Obscenity, what constitutes.—(1) It is the duty of the Court to consider the obscene matter by taking an overall view of the entire work and to determine whether the obscene passages are so likely to deprave and corrupt those whose minds are open to such influences and in whose hands the book is likely to fall and in doing so one must not overlook the influence of the book on the social morality of our contemporary society. *AIR 1970 SC 1390.*

(2) The word 'obscenity' should be given its ordinary and literal meaning. Viz: repulsive, filthy, loathsome, indecent, lewd. But every indecent or filthy object will not come within the mischief of the section. *AIR 1958 Mad 210.*

(3) "Obscenity" means perversity of existing knowledge and having no educative value. *(1971) 73 PunLR (D) 113.*

(4) The use of the term 'obscenity' is restricted to sexual immorality. The true test is thus not to find out what depraves the morals in any way whatsoever but what leads to deprave in only one way, viz., by exciting sexual desires and lascivious thoughts. *AIR 1952 Cal 214.*

(5) The important point to look at would be rather the form of expression 'obscenity' than the actual meaning, for the same meaning may be obscenely expressed by one form of language and yet by the use of another form may be couched in expression free from reproach. *AIR 1952 Cal 214.*

(6) The fact that the publication will not extend a harmful influence of men of wide culture will not be decisive of the matter. *AIR 1932 Cal 651.*

(7) A picture of a woman in the nude is not per se obscene. For the purpose of deciding whether such picture is obscene, one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture and the person or persons in whose hands it is likely to fall. *AIR 1959 All 49.*

(8) Mens rea wor guilty mind has not been dispensed with under the section. *AIR 1965 SC 881.*

(9) All the surrounding circumstances have to be taken into consideration in determining whether the accused had the guilty mind. *AIR 1965 SC 881.*

(10) The prosecution need not give positive evidence to prove guilty intention. Mens rea can be established by circumstantial evidence. *AIR 1965 SC 881.*

(11) A man is deemed to have intended the natural consequences of his act. Hence, once it is found that the publication concerned was obscene mens rea cannot be said to be absent. *AIR 1965 SC 881.*

(12) In prosecution under the section the prosecution need not prove that the person who sells or keeps for sale any obscene object knows that it is obscene. The section does not make knowledge of obscenity an ingredient of the offence. *AIR 1965 SC 881.*

(13) Whether the publication is obscene or not depends upon the material itself and not upon the motive. *AIR 1932 Cal 651.*

(14) The section does not extend to any book, etc., the publication of which is proved to be justified as being for the public good on the ground that such book etc. is in the interest of science, literature, art etc. *AIR 1970 All 614.*

(15) In determining whether or not a publication is obscene regard must be had to that publication alone; other books not the subject of the charges cannot be considered. *AIR 1965 SC 881.*

(16) It will be no defence to a charge under this section to show that similar books which are freely circulating are not subject to any ban. *AIR 1961 Cal 177.*

(17) An overall view of the obscene matter in the setting of the whole work would, of course, be necessary but the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt readers. *AIR 1965 SC 881.*

(18) A book may be obscene although it contains but a single obscene passage. *AIR 1962 Bom 268.*

(19) Though obscenity has extremely poor value in the propagation of ideas, opinions and information of public interest or profit, the approach to the problem in such cases may become different as the interest of the society may tilt the scales in favour of free speech and expression. *AIR 1965 SC 881.*

(20) Where obscenity and art are mixed up, art must be so preponderating as to throw the obscenity into a shadow, or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. *AIR 1965 SC 881.*

(21) Scientific treatises and journals are not to be condemned as obscene publications by treating them in the same way as books and papers which are published for being read by the common and ordinary man and woman. *AIR 1952 Cal 214.*

(22) Books on medical science with intimate illustration and photographs though in a sense immodest are not considered to be obscene but the same illustrations and photographs collected in a book form without the medical text would be considered as obscene. *AIR 1965 SC 881.*

(23) Books intended to give advice to married people and particularly to husbands on how to regulate the sexual side of their lives to be best advantage, that is to say promoting their health and mutual happiness serve a useful purpose and cannot be treated as obscene. *AIR 1956 Bom 32.*

(24) An advertisement of Kok Shastra contained the words "coloured pictures (photos) of 84 postures (Asan) of men and women with interesting descriptions of these". The advertisement did not contain any posture offensive to senses, nor did it suggest any indecent, obscene or immoral ideas. It was held that there was nothing obscene in the word 'Asan' and it did not necessarily mean the posture formed at cohabitation the advertisement did not come within the purview of the section. *AIR 1928 Pat 649.*

4. "Puts into circulation".—(1) Under the section private circulation of obscene literature is also an offence. Putting obscene literature into circulation whether privately or otherwise is an offence. *AIR 1955 NUC (All) 3567.*

5. Exception—Works or religion, art, literature, etc.—(1) Under the section as it originally stood, a representation in a temple or on a car used for conveying an idol was exempted from the

operation of the section. In 1925 in implementation of the International Convention of Suppression of Traffic in Obscene Literature the scope of the exception was slightly enlarged. The exception now applies to any matter connected with religion. However, the scope of the exception was not widened by the above amendment so as to make it applicable to objects of art and literature. *AIR 1962 Bom 268.*

(2) A passage in a religious book may become obscene if it finds place in a journal intended for public. *AIR 1917 Lah 219.*

6. Exhibition of film passed by Board of Censors.—(1) Where the Board of Censors under the Cinematograph Act (1930) has certified a film as being fit to be exhibited such certificate will be a good defence under s. 79 to a prosecution under this section on the ground that the film is obscene. *AIR 1980 SC 605.*

7. "Makes, produces".—(1) It is implied that printing is not to be included in the expression "makes" or "produces" as used in the second part of Section *292(a). 1970 KerLT 605.*

8. Who is liable.—(1) In the case of selling or keeping for sale an obscene object, to escape liability the accused can prove his lack of knowledge unless the circumstances are such that he must be held guilty for the acts of another. The Court will presume that he is guilty, if the book is sold on his behalf and is later found to be obscene unless he can establish that the sale was without his knowledge or consent. *AIR 1965 SC 881.*

(2) Where the prosecution does not prove that a book containing obscene matter was printed at certain press the keeper of the press cannot be convicted on the mere evidence of the printed statement of the book as to where it was printed, for it raises no presumption under S.7 of the Press and Registration of Books Act (1867). The presumption, however, arises against the person who is shown as the printer and publisher. *AIR 1953 Mad 418.*

9. Punishment.—(1) Under the section as amended in 1969, a sentence of imprisonment is obligatory in every case and a mere sentence of fine will not be legal. *1979 CriLJ 1183.*

(2) A middle-aged married man committing an offence under this section cannot be released under the Probation of Offenders Act. *AIR 1974 SC 1230.*

(3) Though motive of the publisher of an obscene book does not prevent it from being obscene it can be taken into account in awarding sentence. *AIR 1932 Cal 651.*

(4) Though absence of knowledge on the part of a person who sells or keeps for sale any obscene object that it is obscene may not take the case out of the section, it may be taken into consideration in mitigation of the sentence. *AIR 1965 SC 881.*

10. Charge—What it should contain.—(1) When a charge is brought under this section it should specify the words or representation alleged to be obscene. *(1878) 3 QBD 607.*

(2) Though it is better and advisable to indicate in the charge how and in what particulars a book is obscene, if the prosecution maintains that the whole book is obscene and the accused is not prejudiced in his defence mere failure of the prosecution to mention particular passages will not be sufficient for interference in revision. *1961 Ker LT 701.*

(3) Clause (1) of this section uses the specific word "obscene" and describes when a book or other matter mentioned therein would be "obscene" for the purpose of the section. Hence, it would be sufficient for a charge under this section to sate that the accused has done one or more of the things which are "obscene". *1979 CriLJ 1183 (DB) (Kant).*

(4) The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—sold (or distributed or imported or printed for sale or hire, or willfully exhibited to public view or attempted to sell, etc. or offered to sell etc.) to wit, which is an obscene book, inasmuch as the following obscene passages or words viz. and you thereby committed an offence punishable under section 292, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

11. Evidence.—(1) In a prosecution under the section the question whether the book is obscene or not does not altogether depend upon oral evidence of a writer and art critic because the book must be judged in the light of the provisions of the section and the provision, of the Constitution. *AIR 1965 SC 881.*

(2) The fact there is undoubtedly a good deal of gulf between legalism and literature on the question of decency is no ground for judging the character of a publications on a different standard than the strictly legal one. *AIR 1955 NUC (All) 3567.*

12. Procedure.—(1) After the amendment the offence under S. 292, P.C. which was prior to amendment, triable by Magistrate of the first class has been made triable exclusively by the Session Court. *1974 CriLJ 178(Guj).*

(2) Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

13. Practice.—Evidence—Prove: (1) That the book, etc., is of an obscene nature.

(2) That the accused—

(a) sold, let to hire, distributed, publicly exhibited or in any manner put into circulation, or for purpose of sale, hire, distribution, public exhibition or circulation made, produced or had in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imported, exported or conveyed any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object would be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) took part in, or received profits from, any business in the course of which he knew or had reason to believe that any such obscene objects were, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put in circulation, or

(d) advertised or make known by any means whatsoever that any person was engaged or was ready to engage in any act which was an offence under this section, or that any such obscene object could be procured from or through any person, or

(e) offered or attempted to do any act which was an offence under this section.

Section 293

[8][**293. Sale, etc. of obscene objects to young person.**—Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years

8. Section 293 was substituted for the original section by the Obscene Publications Act, 1925 (Act VIII of 1925), s. 2.

any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

Cases and Materials

1. Scope.—This section was substituted for the original section by section 2 of the Obscene Publications Act (VIII of 1925). It merely enhances the punishment where the obscene objects are sold, etc., to persons under the age of 20 years. On a conviction the court may order the destruction of all the copies of the thing in respect of which the conviction was held *(section 521, CrPC)*.

(2) The word "obscene" in this section must be given the same meaning as under S. 292. Whether a publication is obscene is a question of fact, and the High Court will not ordinarily interfere with the decision of the trial Court on the point. *(1918) ILR 20 Bom 193.*

2. Practice.—Evidence—Prove: (1) That the book, etc. is of an obscene nature.

(2) That the person to whom it was sold, etc. or offered or attempted to be sold was under the age of 20 years.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.,) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—sold, let on hire, distributed, exhibited or circulated to (name of the person aged) being below 20 years of age (specify the obscene object) or offered or attempted to sell, let on hire, etc. and thereby committed an offence punishable under section 293 of the Penal Code and within any cognizance.

And I hereby direct that you be tried on the said charge.

Section 294

[9][**294. Obscene acts and songs.**—Whoever, to the annoyance of others,—

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]

Cases and Materials: Synopsis

1. *Scope and object of the section.*
2. *Annoyance.*
3. *Punishment.*
4. *Procedure.*
5. *Practice.*
6. *Charge.*

1. Scope and object of the section.—This section is intended to prevent obscene acts being performed in public to the annoyance of the public at large. Annoyance to others is an essential ingredient of the offence under this section. A prosecution under this section will not fail if two girls

9. Section 294 was substituted for the original section by the Indian Criminal Law Amendment Act, 1895 (Act III of 1895), s. 3.

who were the objects of the obscene act were not produced as witness *(1963 CrLJ 273)*. Obscene songs when sung the prosecution will have to show that the actual words used were obscene. A conviction under this section for uttering an obscene abuse in a public place may amount to a conviction for an offence involving a breach of the peace within the meaning of section 106, CrPC. Where the obscene words used by the accused were not set out in the evidence, it was held that the omission was not a sufficient ground for setting aside a conviction.

(2) Witnesses not stating actual words of song for determining whether the song was obscene—or not—mere statement of complainant that accused sang obscene songs in front of his house cannot be considered sufficient for conviction under section 294. *1969 PCrLJ 615.*

(3) Annoyance to somebody is necessary to constitute an offence under this section. *(1872-1892) LowBur Rul 537.*

(4) The section is intended to prevent obscene acts being done in the public to the annoyance of the public at large and it does not limit the scope of the word "others" to mean the person who is the intended victim of the obscene act of the accused. *AIR 1963 All 105.*

(5) Cabarets are shown all over the world and unless there is a special legislation to ban them, it will be a misuse of S. 294, P.C., to punish the entertainers and organisers of such shows. *1981 Chand Cri C 17.*

(6) No precise or arithmetical definition of the word which would cover all possible cases can be given. Whether the questioned act is obscene or not will have to be judged on the facts of each case in the context of its surroundings. *1970 Cri LJ 1323.*

(7) The test of obscenity is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences. *1968 KerLT 219.*

(8) An address to respectable young girls in a public place suggestive of illicit sex relation with them will amount to the uttering of obscene words within the meaning of the section. *AIR 1963 All 105.*

2. Annoyance.—(1) Annoyance, an important ingredient of the offence under this section is generally associated with the mental condition and for that reason it is difficult to prove as a fact by positive evidence. In almost all the cases it is to be inferred from proved facts. *1973 CriLJ 1047 (Mys).*

3. Punishment.—(1) An offence under this section must be looked upon with utmost severity and the maximum sentence of three months' rigorous imprisonment was called for and a lighter sentence would not meet the ends of justice even if the accused was a youngster of 16 or 17 years of age. *AIR 1963 All 105.*

(2) A sentence of three months was held to be unduly severe. *AIR 1923 Rang 253.*

(3) Where a woman was convicted for abusing her husband it was held that a fine of Rupees 20 or simple imprisonment for one month in default of payment of fine was unduly severe. *(1872-1892) Low BurRule 309.*

4. Procedure.—(1) Where an accused is prosecuted under this section alone and the charge fails, he cannot be convicted under the Police Act. *(1969) 71 PunLR 277.*

(2) Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

5. Practice.—Evidence—Prove: (1) That the accused did some act or that the accused sang, recited or uttered any obscene songs, ballad or words.

(2) That this was done in or near a public place.

(3) That it was of an obscene nature.

(4) That it caused annoyance to others.

6. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—did an obscene act namely—or sang, recited or uttered any songs, ballad or words (specify the song or recital) in a public place (specify the place) that such an act or singing or reciting or uttering was obscene and that it caused annoyance to others and thereby committed an offence under section 294 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 294A

[10][**294A. Keeping lottery office.**—Whoever keeps any office or place for the purpose of drawing any lottery [11][not being a State lottery or a lottery authorized by the [12][Government]] shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery shall be punished with fine which may extend to one thousand [4][taka].

Cases and Materials: Synopsis

1. *Scope of the section.*
2. *Liability under first clause of the section.*
3. *"Keeps any office or place".*
4. *Lottery.*
5. *"Drawing any lottery".*
6. *"Not being a State Lottery or a lottery authorised by the Government".*
7. *Offence under second clause.*
8. *Lottery and wagering contracts.*
9. *Suit by person purchasing lottery tickets, for return of money.*
10. *Punishment.*
11. *Procedure.*
12. *Practice.*
13. *Charge.*
14. *Sanction.*

1. Scope of the section.—(1) A lottery stands on the same footing as gambling because both of them are games of chance. The object of this section is to save people from the effects of unauthorised lotteries. The mischief of gambling is confined to participants comparatively limited while in a lottery the mischief is widespread. This section penalises lottery which is widespread. When government themselves run lotteries or permit lotteries to be run for certain purposes they do not legalise them but they only exempt such lotteries. The second link of the section makes the publication of any proposal

10. Section 294A was inserted by the Indian Penal Code Amendment Act, 1870 (Act XXVII of 1870), s. 10.
11. Substituted by A.O. 1937, for "not authorised by Government".
12. The word "Government" was substituted for the words "Povincial Government" by Act VIII of 1973, Second Sch. (w.e.f. 26th March, 1971).

to pay any sum on an event or contingency relative to the drawing of any ticket in such lottery. The existence of the reference as to prizes in the circular is enough to attract this section. The intention of the legislature is that the public should not be informed of such proposals *(Ref. 5 BCR 265 AD)*.

(2) Though only a particular activity out of the series of activities involved in conducting a lottery is made a punishable offence it does not mean that the other activities are lawful. A distinction must be made between the two categories into which acts, which are not lawful, can be divided. An act may not be lawful and may be made into a penal offence and therefore punishable, but in the other category would fall acts which are not lawful but yet not punishable crimes but which may entail only civil consequences. *AIR 1971 Bom 332.*

2. Liability under first clause of the section.—(1) This section makes it an offence for any person to keep an office or place for the purpose of drawing a lottery which is not authorised. *AIR 1933 Mad 16.*

(2) Keeping an office or place for drawing an unauthorised lottery is an offence and this would include the case of a person who, without being an owner or occupier is permitted to keep the place for the particular object. *AIR 1936 Mad 225.*

(3) The members of a committee of a club who exercise full control over club matters including its premises can be said to keep the premises of the club within the meaning of this section. *AIR 1914 Low Bur 23.*

(4) Whether a corporation can or cannot be liable for an offence under this section, its officers may well be liable and investigation alone can determine if any or all of them are so liable. *AIR 1930 Lah 581.*

3. "Keeps any office or place."—(1) The conditions of the first part of the section are complied with when it is shown that the accused did keep an office where they carried on the necessary preliminary work for running a lottery and which they held out to the public as the place where the lottery would finally be drawn. *AIR 1923 Mad 187.*

(2) It is not essential to the commission of an offence of keeping a place for the purpose of drawing a lottery, which is not authorised, that it should be solely appropriated to such purpose. *AIR 1936 Mad 225.*

(3) Where a house is kept for a double purpose, viz., as an honest social club and also for drawing a lottery it is a place kept within the meaning of this section. *AIR 1914 Low Bur 23.*

4. Lottery.—(1) There is no definition of the word "lottery" in the Penal Code so that the word as used in this section must bear its ordinary meaning. In its ordinary meaning what constitutes lottery is that some gain, which need not be a money prize, is to come to the subscriber, dependent upon pure chance, any element of skill being absent. *(1958) 1 AndhWR 456(457).*

(2) A scheme may be a lottery though none of the competitors is a total loser. *AIR 1936 Mad 225.*

(3) A scheme under which a number of persons subscribe to a fund for the purpose of dividing that fund between them by chance and unequally will be a lottery. Thus where a person subscribes to a fund every month but the prize winner every month as a result of a draw is paid a lump sum after which he is not required to subscribe there is a lottery. *AIR 1934 Mad 482.*

(4) The essential feature of a lottery is that the prizes are determined solely by chance. If chance so decrees that no prize is to be distributed to the adventurers and the stakes are to be appropriated by the organizer the scheme is still a lottery. *AIR 1917 Lah 93.*

(5) It is not necessary for a scheme being a lottery that the fund out of which the prizes are provided should consist only of sums contributed by the adventurers. *AIR 1934 Sind 149.*

(6) A scheme would be a lottery even if the prize money came out of the interest earned from the subscribers' contributions. If the subscribers have purchased a chance of winning a prize it can make no difference whether the prizes are paid circuitously from the interest earned on the subscribers or are paid directly from those contributions. *AIR 1936 Mad 225.*

(7) A scheme by a company purporting to grant interest bearing loans on personal security to persons chosen by lot or granting cash bonuses to donors by drawing lots is a lottery within the meaning of the section. *AIR 1933 Mad 129.*

(8) There can be a lottery within the meaning of the section even if the number of the subscribers is known. *AIR 1936 Mad 225.*

5. "Drawing any lottery".—(1) The section contemplates only lotteries in which the lucky numbers are ascertained by drawing. Drawing is used in its physical sense, meaning actual drawing form an urn, box or other receptacle whether by manual, mechanical or other process. *AIR 1957 AndhPara 987.*

(2) A person who conducts a lottery in which the lucky numbers are calculated arithmetically is not guilty under this section. *AIR 1942 Mad 404.*

(3) The accused who was a dealer in cigarettes had caused five-rupee notes to be placed in some packets and any purchaser of a packet of the cigarettes sold by the accused stood a chance of getting a packet of cigarettes containing a five rupee note. It was held that although the transaction in question amounted to a lottery there was no 'drawing' within the meaning of the section and hence the accused could not be held guilty under this section. *AIR 1928 Bom 559.*

6. "Not being a State lottery or a lottery authorised by the Government."—(1) This section does not apply to State lotteries or lotteries authorised by the Government. The burden lies on the accused to show that the lottery was authorised by government. *AIR 1914 LowBur 23.*

(2) A collector who is a revenue officer is not authorised to sanction a lottery. *AIR 1914 Low Bur 23.*

(3) The mere act of taking income tax from a club on the profits of lotteries does not constitute authorisation. *AIR 1914 Low Bur 23.*

(4) The Government issued an order declaring that conducting Chit funds was illegal but added that the prosecution of persons who were running Chit funds in ignorance of law would be withheld provided they did their best to wind up lottery and pay everybody who had subscribed to the lottery. It was held that the order of the Government withholding prosecution during certain time in which the subscriptions were directed to be repaid did not amount to authorisation of the lottery. *AIR 1938 Mad 715.*

7. Offence under second clause.—(1) The offence under the second clause of the section consists in the publication of proposals and does not depend upon whether the proposals are actually carried out or not. *AIR 1934 Mad 464.*

(2) If the proposals are such as come within the mischief of the second clause the offence is complete by publishing them and it does not matter whether the scheme is to actually conduct the lottery or to merely defraud the public. *AIR 1957 Andh Pra 987.*

(3) A large number of lottery tickets were found in the shop of the accused. The name of the accused had been entered in the counterfoils in the space provided for the name, not of the purchaser of the ticket but of the seller of the ticket to the ultimate purchaser. A printed document headed by the name of the accused in large capitals containing a proposal to purchasers to buy shares each amounting to 1/72nd in lots of twelve tickets and reciting that the holder of the document was entitled to 1/73rd share of any price won by any one of the twelve tickets was also found. It was held that there was publication which was established by the very fact that the proposal forms had been printed in press. *AIR 1941 Sind 91.*

(4) Under the clause, publication of the proposal is enough. It is not necessary that the payment proposed to be made should be made by the person advertising. The accused issued a circular for the sale of tickets for prize on horses winning at the Derby races. The circular state that the "sweep will be closed on . . . . . and the draw will take place on . . . . . Prize winners will be notified by telegram". It was held that the accused published a proposal to pay a sum for the benefit of any person on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in a lottery and was liable to punishment. *AIR 1925 Bom 243.*

(5) The publication that lottery tickets can be had at a particular place is not sufficient to constitute a publication of proposal to pay any sum on any event or contingency relative or applicable to the drawing of any ticket in any lottery not authorised by Government as provided in the second clause. *AIR 1925 Bom 26.*

(6) The word "goods" in the second clause applies not only to movable property but also to immovable property. *AIR 1927 Mad 66.*

8. Lottery and wagering contracts.—(1) A lottery is distinct from a wager. *AIR 1936 Mad 225.*

(2) Wager is between two parties whereas a lottery is a multipartite agreement. *AIR 1933 Mad 16.*

9. Suit by person purchasing lottery tickets, for returns of money.—(1) Section 294-A is aimed at the class of person who promote lotteries and it is intended to protect the class of persons who are tempted to take tickets in lotteries. The purchaser of a ticket is not in pari delicto with the promoter. So a person subscribing for a lottery is entitled to recover his subscription from the promoter even if the money has been distributed. *AIR 1936 Mad 225.*

10. Punishment.—(1) Though ignorance of law is no defence to a prosecution under this section it can be taken into consideration in awarding sentence. *AIR 1934 Sind 149.*

(2) Where the common object is the keeping of a place for the purpose of drawing a lottery not authorized by Government all who engage in such an object can be held guilty. *AIR 1914 Low Bur 23.*

11. Procedure.—(1) A valid complaint as required by S. 196, Criminal P.C., is a condition precedent for taking cognizance of an offence under this section. In the absence of such a complaint the Magistrate would have no jurisdiction to proceed to the trial and the defect is not curable under S. 465, Criminal P.C. *AIR 1957 Andh Pra 987.*

(2) The District Magistrate acting under S. 155(2), Criminal P.C., can order investigation into a case under this section even though the offence cannot be tried without a complaint by the Government or by some officer empowered by the Government in this behalf. *AIR 1932 Lah 581.*

(3) Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

13. Practice.—Evidence—Prove: (1) That the accused kept an office or place for drawing a lottery.

(2) That such lottery was not a lottery run by the Government and that it was an unauthorised offence falling under the second limb.

(3) That the accused published a proposal.

(4) That the said proposal was to pay any sum or deliver any goods or to do or forbear from doing something for the benefit of any person on any event or contingency relative or applicable to the drawing of any ticket lot, number or figure in any such lottery.

14. Charge.—The charge should run as follows:

I, (name and office of the Magistrate. etc.) hereby charge you (name of the accused) as follows:

(a) First Limb:—That you, on or about the—day of—at—kept an office or place for the purpose of drawing a lottery, not being a State lottery, authorised by the Government.

(b) *Second Limb:*—That you, on or about the—day of—at—published a proposal to pay sum or to do or forbear doing anything for the benefit of any person on an event or contingency relative or applicable to be drawing of any ticket lot, number or figure in any such lottery, authorised by the Government and thereby committed an offence punishable under section 294A, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

15. Sanction.—No court shall take cognizance of an offence under this section unless upon a complaint made by the order of or under authority from Government (section 196, CrPC).

Section 294B

[13]**[294B. Offering of prize in connection with trade, etc.**—Whoever offers, or undertakes to offer, in connection with any trade or business or sale of any commodity, any prize, reward or other similar consideration, by whatever name called, whether in money or kind, against any coupon, ticket, number or figure, or by any other device, as an inducement or encouragement to trade or business or to the buying of any commodity or for the purpose of advertisement or popularising any commodity, and whoever publishes any such offer, shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine, or with both].

Cases and Materials

1. Scope.—Petitioners have admitted that they have televised the advertisement and over the radio as well by offering gifts to the consumers for the purpose of popularising their "Lifebuoy" product, *prima-facie* commit an offence punishable under section 294B of the Penal Code. *Amal Cabraal Vs. Golam Murtaza (Criminal) 55 DLR 492.*

2. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

3. Practice.—Evidence—Prove: (1) That the accused offered or undertook to offer in connection with business or trade, sale of any commodity, any price or reward or other similar consideration.

13. Section 294B was added by Act XX of 1965, s. 3.

(2) That the accused by that name, whether in money or kind or against any coupon, ticket, number or figure, or buy any other device, wanted to induce or encourage any business or trade to the buying of any commodity.

(3) That the accused for that purpose advertised or tried to popularise any commodity in any way.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—offered or undertook to offer in connection with (name of the business) or sale of the commodity any price or reward or any other consideration whether in money or kind etc. as an inducement or encouragement to trade or business and to the buying of any commodity for the purpose of advertisement or popularizing any aforesaid commodity and thereby committed an offence punishable under section 294B of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

CHAPTER XV
Of Offences relating to Religion

Chapter introduction.—*The Romans were religious cynics and tolerated all religions and left alone those professed by races brought under their subjection. This policy has been adopted by all rulers who profess religious neutrality but, at same time, insist that followers of rival religions shall not make religious beliefs of others a target for their hostility. This Chapter has been enacted to subserve that object.*

"The principle on which this Chapter has been framed is a principle on which it would be desirable that all Governments should act, but from which the British Government in India cannot depart without risking the dissolution of society: it is this that every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another".

"The legislature in enacting Chapter XV, P.C. in a country populated by persons of evidently different religions, had it in view to punish deliberated acts of offence perpetrated by persons of one religious persuation of the insult or annoyance of persons of another persuation". Section 295 makes punishable acts of destruction, damage or defilement by whomsoever committed quite irrespective of the person of the offender provided such acts are done with intention of insulting the religion of any class of persons or with the knowledge that such destruction, damage or defilement will be considered by any class an insult to their region. The mens rea is therefore of the essence of the offence and in addition, the act must itself be one of destruction, damage or defilement, otherwise it is not criminally punishable". The legislature has made a great advance in adopting religious toleration which civilised Governments enjoin.

In the case of a person defiling place of worship of offering indignity to a human corpse, the intention with which the act was done or the knowledge of what was likely to be the effect of the act may almost be assumed from the nature of the act but they are in some cases likely to be proved. In the case of destruction, damage or trespass the intention of the accused has to be proved in the case of disturbance of religious worship the section does not require proof of intention. It is necessary however to prove that there was an assembly lawfully in public worship that the assembly was infact disturbed and the accused did the act causing a disturbance or with intention of causing disturbance or knowing that such act was likely to cause a disturbance.

This Chapter is also in consonance with the article 41 of the Constitution of Bangladesh which states as follows:

41. Freedom of religion.— *(1) Subject to law, public order and morality—*

(a) every citizen has the right to profess, practise or propagate any religion;

(b) every religious community or denomination has the right to establish, maintain or manage its religious institutions.

(2) No person attending any educational institutions shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own."

Section 295

295. Injuring or defiling place of worship, with intent to insult the religion of any class.—Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Cases and Materials: Synopsis

1. *Scope and object of the section.*
2. *Abetment of offence under section.*
3. *"Destroys, damages or defiles."*
4. *"Place of worship".*
5. *"Object held sacred".*
6. *"Religion of any class of persons".*
7. *'With the intention of thereby insulting their religion'.*
8. *Punishment.*
9. *Practice.*
10. *Procedure.*
11. *Charge.*

1. Scope and object of the section.— (1) This section has been intended to respect the religious susceptibilities of persons or different persuasions and creeds. Courts have got to be very circumspect in such matters and pay due regard to feelings and religious emotions of different classes of persons with different beliefs irrespective of the consideration whether or not they share those beliefs or whether they are rational or otherwise in the opinion of the court. The word 'object' in section 295 does not include animate objects. A bull dedicated and set at large at a Hindu ceremony of Shardha is not an object within the meaning of section 295 *(17 Cal 252).* The word 'defile' in this section cannot be confined to the idea of making dirty but must also be extended to ceremonial pollution.

(2) Ingredients of the offence—The essential ingredient of offence u/s. 295, 297 is that the accused must act with the intention of insulting the religion of any class of persons. *Rajkishore Shil vs. Rashan Ali & ors. 5 BSCD 37.*

(3) Ingredient of the offence under section 295 speaks of defining of any place or worship or any object held sacred by any class of persons. The section does not require investigation into the possession or ownership of the land. *Okil Ali Vs. Bohari Lal Paul (1961) 13 DLR 305.*

(4) The ingredients of S. 295 are: first, that a person should destroy, damage or defile any place of worship or any object held sacred by any class of persons; and secondly he should have the intention of thereby insulting the religion of any class of persons or the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion. If any one of the ingredients is not present the section cannot apply. *AIR 1955 Mad 550.*

(5) The section is intended to respect the religious susceptibilities of persons of different religious creeds or persuasions. Courts have got to be circumspect in such matters and to pay due regard to the feelings and religious emotions of different classes of persons with different beliefs irrespective of the

consideration whether or not, they share those beliefs or whether they are rational or otherwise in the opinion of the Court. *AIR 1958 SC 1032.*

2. Abetment of offence under seciton.—(1) Offence under S. 295-A and B alleged to have made statements amounting to abetment of offence—B acquitted—B's statement inextricably mixed up with that of A—A's conviction cannot be sustained. *1978 CriLJ 256* (Gauhati).

3. "Destroys, damages or defiles".—The word is not to be restricted to acts that would make an object of worship unclean as a material object but extends to acts done in relation to the object of worship which would render such object ritually or ceremonially impure. *1959 Nag LJ (Notes) 120.*

(2) Where a person belonging to Moothan Caste which is one of the sub-divisions of the Sudra caste entered the Nallombalam of a temple which was open to non-Brahmins, it was held that his act did not amount to defiling the temple within the meaning of this section. *AIR 1919 Mad 755.*

(3) Where a Mahomedan threw a burning cigarette on the 'Viman' (an object held sacred by the Hindus) taken out in a procession by Hindus but the cigarette did not actually fall on the 'Viman' but struck the side and fell on the ground it was held that the accused was guilty under this section read with S. 511. *AIR 1955 Bhopal 23.*

4. "Place of worship".— (1) The use of a hut on an agricultural land without the permission of the landlord as a public mosque with the azan or public call to prayers does not make it a place of worship. *AIR 1941 Pat 492.*

(2) Where the lessor has not dedicated the site or the shed over it to the Hindu public to be used as a temple or place of worship the mere fact that the lessee uses the same as a place of worship and permits such user by other Hindus of the locality cannot make the place a place of worship. *AIR 1961 Ker 28.*

5. "Object held sacred".—(1) Whether any object is held sacred by any class of persons must depend upon the evidence in case. *AIR 1958 SC 1032.*

(2) Any object, however trivial or destitute of real value in itself, if regarded as sacred by any class of persons would come within the meaning of the section. *AIR 1958 SC 1032.*

(3) It is not absolutely necessary that the object in order to be held sacred should have been actually worshipped. The object may be held sacred without being worshipped. *AIR 1958 SC 1032.*

(4) To hold that only idols in temples or idols carried in procession on festival occasions are meant to be included within the words "any object held sacred by any class of persons" is to give these words a much too restricted meaning not warranted by the section. *AIR 1958 SC 1032.*

(5) It is well known that the image of Lord Ganesh or any objective representation of a similar kind is held sacred by certain classes of Hindus even though the image is made of mud and has not been consecrated. *AIR 1958 SC 1032.*

(6) A sacred book like the Bible or the Koran or the Granth Sahib is an object held sacred within the meaning of the section. *AIR 1958 SC 1032.*

(7) The word 'object' used in this section applies to some inanimate object such as an idol and not to an animate object such as a cow or a bull dedicated to deity. *AIR 1918 Lah 365.*

(8) The use of a hut on an agricultural land without the permission of the landlord as a public mosque with the azan or public call to prayers does not make it an object held sacred by any class of persons within the meaning of this section. *AIR 1941 Pat 492 (493, 494), 12 CriLJ 579.*

6. "Religion of any class of persons."—(1) The section applies not only as between those who follow different religious but also between different sects or classes of Hindus who are animated by sectarian feelings. *I Weir 253.*

(2) A class of persons would certainly be a body of persons. But in order that a body of persons might form a class there must be a principle of classification and even two persons would be sufficient to form a class if these two persons according to the principle of classification adopted form a group distinct from any other group. *(1955) 98 Cal LJ 139.*

7. "With the intention of thereby insulting ..... their religion".—(1) Mere defilement of a place of worship is not punishable under this section. There must, further, be an intention of thereby insulting the religion of any class of persons or the knowledge that a class of persons is likely to consider the defilement as an insult to their religion. *AIR 1955 NUC (Raj) 4036.*

(2) The question whether there was intention to insult must depend upon the evidence in the case. *AIR 1958 SC 1032.*

(3) Where a Hindu breaks the thread of another Hindu regarding him as an upstart wearing something which he was not entitled to wear, neither the victim of the assault would be likely to consider the act as an insult to his religion nor the assailant could be considered to have the knowledge that he was likely to do so. The case would be otherwise if a Mahomedan or a Christian or an atheist tears off the sacred thread which is being worn by a Hindu entitled to, or even claiming to be entitled to, wear it and the assailant at the same time indicates disrespect for the thread. *AIR 1940 Oudh 348.*

(4) Where a Mohomedan threw a burning cigarette on a 'Viman' (an object held sacred by Hindus) which was being carried in a procession by Hindus it was held that the act of the accused could not be held to be unintentional or that it could not be said that he had no guilty knowledge as contemplated by this section. In any case, the accused would be supposed to have the knowledge that the Hindus were likely to consider the defilement of a 'Viman' to be an insult to their religion. *AIR 1955 Bhopal 23.*

(5) Where the assignee of a decree in favour of the lessor got delivery of the leased property through Court the assignee must have honestly believed that he had the right to use the property as he liked and by pulling down the shed used by the lessee as prayer hall he could not be said to have intended or known that such an act would be an insult to the religion of others who had no right over the shed. *AIR 1961 Ker 28.*

(6) In the Puri Jagannath temple the Bhog was found kept, on a certain day, outside the inner sanctum. As the Bhog became unfit for being offered to the deity, the Puja Pandas ordered it to be removed. The cooks, instead of removing it themselves, had it removed by Sudra Bhojyas. The Puja Pandas, therefore, insisted that a pollution had taken place and they refused to perform the knits unless mahasnan was performed. Thereupon the temple authorities ordered the pushpalak sebaks to perform the remaining knits. It was held that as on previous occasions the pushpalak sebaks had been allowed to offer the seba puja and as the knits had been inordinately delayed by the refusal of the Puja Pandas on the day in question the authorities could not be said to have either intended or known it to be likely that the Bhog offered by the pushpalak sebaks would be defiled and that the Hindu religion would be insulted. *AIR 1958 Orissa 220.*

8. Punishment.—(1) When a person enters a Hindu temple and damages its property it is improper to pass consecutive sentences for each of the offences under Ss. 295 and 447 as the offence under S. 447 is inseparable from that under S. 295. *AIR 1925 Oudh 50.*

9. Practice.—Evidence—Prove: (1) That the place was one of worship or that the object was a sacred one.

(2) That the same was held sacred by a class of persons.

(3) That the accused destroyed, damaged, or defiled the same.

(4) That he did so (a) with the intention of thereby insulting the religion of a class of persons, or (b) with the knowledge that a class of persons is likely to consider such destruction etc. as an insult to their religion.

10. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

11. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.,) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—destroyed (or damaged or defiled) a certain place of worship, to wit—(or a certain object, to wit—) held sacred by (specify the class of persons) with the intention of thereby insulting the religion of (specify the class of persons insulted) (or with the knowledge, etc.,) and thereby committed an offence punishable under section 295, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 295A

[1][**295A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.**—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [2][the citizens of [3][Bangladesh]], by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

Cases and Materials: Synopsis

1. *Scope of the section.*
2. *Constitutional validity of section.*
3. *"Deliberate and malicious intention".*
4. *Defence to charge under this section.*
5. *Forfeiture of offending copies.*
6. *Procedure.*
7. *Practice.*
8. *Charge.*
9. *Sanction.*

1. Scope of the section.—(1) Section 295A has been intended to respect the religious susceptibilities of person of different religious persuasions or creeds *(1962 CrLJ 594)*. It is true that in countries where there is religious freedom certain latitude must of necessity be conceded in respect of the free expression of religious opinions together with a certain measure of liberty to criticise the religious beliefs of others. But, that does not mean that he should indulge in writing articles in a

1. Section 295A inserted by the Criminal Law Amendment Act, 1927 (XXV of 1927), s. 2.
2. Substituted by A.O., 1961, Art. 2 and Sch., for "His Maesty's subjects" (with effect from the 23rd March. 1956.
3. The word "Bangladesh" was substituted by Act VIII of 1971 w.e.f. 26-3-1971, for "Pakistan"

highly objectionable language intended to outrage the religious feelings of the followers of other religions. It is contrary to all reason to imagine that liberty to criticise includes a licence in resort to vile and abusive language. In this section the word 'malicious' has not been used in the popular sense. In order to establish malice as contemplated by this section, it is not necessary for the prosecution to prove that the accused bore ill will or enmity against specific person. If the injurious act was done voluntarily without a lawful excuse, malice may be presumed. Malice in one sense is a negation of bonafides. If a person knowing that his words, either uttered or written, are likely to offend or injure the religious faiths of others, indulges in them, it would be difficult to hold that his act was done bonafide and without malice. It is wrong to think that the truth of the allegations could be an effective defence to a charge under section 295A of the Penal Code. Having regard to the purpose for which section 295A of the Penal Code has been enacted it is not possible to accept the view that a statement which would otherwise fall within the mischief of section 295A, can be taken out of it merely because in happens to be a true statement. If the language used transgresses the limits of decency and is designed to vex, annoy and outrage the religious feeling of others, "then the malicious" intention of the writer can be inferred from the language employed by him .

(2) Insult to religious beliefs—Section 295A on its language is applicable to those insults to religious beliefs which in addition to being deliberate and malicious are intended to outrage the religious feelings of the followers of that religion. *W.M.N. Trust, Lahore Vs. Crown (1955) 7 DLR (WPC) 17.*

(3) Law requries the lodging of complaint by the prescribed authority in respect of an offence under Section 295A of the Penal Code but no such restriction has been imposed upon Section 298 of the Penal Code. *Md. Jamir Sheikh Vs. Fakir Md. A. Wahab and another 10 BLD (HCD) 452.*

(4) Deliberate and malicious acts, either spoken or written, or by visible representation intended to outrage religious feelings of any class of citizens constitute an offence under section 295A of the Penal Code. *Dr. Homco Baha Jahangir Beiman-al-Shuresari Vs. The state, 16 BLD (HCD) 140.*

(5) Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs. Section 295A of the Code on its language is applicable to those insults to religious beliefs which in addition to being deliberate and malicious are intended to outrage the religious feelings of the followers of that religion. After going through the publication very carefully and meticulously as to its entirety the High Court Division held that the same has not been written or published with any intention to hit the religious feeling or sentiments of the Muslims, rather, it was written against the narrow interpretation or distorted meaning given or spread out in our country, specially, by less educated and half educated fanatic religious Mollas and Islamic fotowabaj. Reading of the entire caption and publication establishes that its inner or real meaning is not at all intended to hit the feeling of any Muslim or to distort the meaning of the said Sura of the Holy Quaran. *Shamsuddin Ahmed and others Vs The State and another, 20 BLD (HCD) 268.*

(6) Section 295A and 298—In spite of issuance of repeated summons and warrant of arrest the responded No. 2 did not appear before the Magistrate concerned but prayed for quashing the proceeding before the High Court Division without praying for bail for which it was the duty of the HCD to reject the quashing petition. *Mowlana Md. Yusuf Vs State and another (Criminal 3 B4C 171.*

(7) The intention of the publication was to make the real Muslims aware about the false interpretation given by the so-called half-educated and preachers of Islam. The allegation does not come within the ambit of the offence of section 295A of Penal Code against the petitioners. *Shamsuddin Ahmed and others Vs. State and another (Criminal) 52 DLR 497.*

(8) The further requirement of the section is that the writing etc. must be with deliberate and malicious intention of outraging the religious feelings of such class. *AIR 1971 Madh Pra 152.*

(9) The section is intended to respect the religious susceptibilities of persons of different religious persuasions or creeds. Courts have got to be very circumspect in such matters and to pay due regard to the feeling and religious emotions of different classes of persons with different beliefs irrespective of the consideration whether or not they share those beliefs or whether they are rational or otherwise in the opinion of the Court. *AIR 1960 All 715.*

(10) The offence under this section is more serious than the one under S. 298. 'Outraging' is a stronger word than 'wounding' and the intention to outrage is malicious as well as deliberate and is directed to a class of persons and not merely to an individual. *AIR 1939 Rang 199.*

(11) The section which has been inserted in the Code in 1927 has no retrospective effect. But where a book which falls under S. 153A is reprinted and republished with the author's permission after the enactment of the section the author can be convicted under this section. *AIR 1941 Oudh 310.*

(12) The promotion of enmity between the followers of different religions does not come within the purview of the section but under S. 153-A. *AIR 1971 Madh Pra 152.*

2. Constitutional validity of section.—(1) The calculated tendency of the aggravated form of insult to religion is clearly to disrupt the public order and the section which penalises such activities is well within the protection of clause (2) of Art. 19 of the Indian Constitution as being a law imposing reasonable restrictions on the exercise of the right of freedom of speech and expression guaranteed by art. 19 (1) (a) of the Constitution in the interests of public order. *AIR 1957 SC 620.*

3. "Deliberate and malicious intentions."—(1) Insult to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feeling of that class will not come under this section. But if the intention is to outrage religious feelings deliberately and maliciously an offence under this section will be made out. *AIR 1957 SC 620.*

(2) Malice has to be gathered primarily from the language used by the accused. *AIR 1960 All 715.*

(3) It is permissible to receive and consider external evidence either to prove or to rebut the meaning ascribed to malice. *AIR 1960 All 715.*

(4) If the words used caused persons to feel insulted but were only such as might possibly wound and in fact did so, then there would be no offence under this section; if, however, the words used were hound to be regarded by any reasonable man as grossly offensive and provocative and were maliciously intended to be regarded as such, then an offence under this section would have been committed. *AIR 1957 All 538.*

(5) Where the accused destroys the sacred thread worn by another on the ground that he was not entitled to wear it but does not speak slightingly of the thread with reference to its religious significance this section has no application. *AIR 1940 Oudh 348.*

(6) A bull dedicated to Lord Shiva is a public property unless the deity contemplated is in existence in the shape of a consecrated idol. If the bull is sold under the Cattle Trespass Act the purchaser acquires a proprietary title to it; and if he used the bull for the purpose of polishing after puncturing its nose he does not commit an offence under this section for hurting the religious susceptibilities of the Hindu community. *AIR 1952 All 26.*

(7) Held, that in no part of the book called 'Gurumat Vichar Suraj' was there any passage showing disrespect to the Sikh Gurus or the Sri Guru Grantha Sahib. The author professed to accept the

message of the gurus as contained in the Sri Guru Grantha Sahib but sought to place his own interpretation on that message. *AIR 1955 Punj 28.*

4. Defence to charge under this section.—(1) It is no defence to a charge under this section that the statement was true. Even a true statement may outrage the religious feelings of a class of citizens. *AIR 1960 All 715.*

(2) It is no defence to a charge under the section for anyone to say that he was writing a pamphlet in reply to one written by an adherent of another religion who has attacked his own religion. *AIR 1955 Punj 28.*

(3) It is no defence that the another had incidentally attacked other religious beliefs also. *AIR 1959 AndhPra 572.*

(4) To a charge under the section it would be a defence to say that the accused had no malicious intention towards a class but be did intend to wound or shock the feelings of an individual so that attention might, however rudely, be called to the reform which he had in view. *AIR 1939 Rang 199.*

5. Forfeiture of offending copies.—(1) In order that the liability for forfeiture and seizure under S. 95(1) of the Criminal P.C. may be incurred, it is necessary that the grounds of such action must fall within the scope of the grounds on which a person may be held guilty under this section. It is not enough if the publication offends S. 153A as promoting class hatred or enmity between followers of different religion. *AIR 1971 MadhPra 152.*

6. Procedure.—(1) Private complaint S. 295A—Obtaining of sanction of concerned Government under S. 196 S. 196(1) Criminal P.C. (2 of 1974) is sine qua non and no Magistrate can take cognizance of that complaint unless order granting sanction is produced. *1981 CriLJ 113.*

(2) Cognizable—Summons—Not bailable—Not Compoundable—Triable by any Magistrate.

7. Practice.—Evidence—Prove: (1) That the accused spoke or wrote the words or made the visible representations.

(2)That the accused thereby insulted or attempted to insult the religious beliefs of a class of persons.

(3) That the accused did so with a deliberate and malicious intention of outraging the religious feelings of that class.

8. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.,) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—insulted (or attempted to insult) the religion (or the religious beliefs) uttering the following words or written as follows or made the following signs or visible representations and you spoke or wrote or made signs or made visible representations with the deliberate and malicious intention of outraging the religious feelings of a class of citizens namely—and thereby committed an offence punishable under section 295A of the Penal Code and within any cognizance.

And I hereby direct that you be tried on the said charge.

9. Sanction.—Sanction of Government is necessary for prosecution under this section (section 196, CrPC).

Section 296

296. Disturbing religious assembly.—Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

Cases and Materials: Synopsis

1. Scope and applicability of section.—The object of section 296 is to secure freedom from molestation when people meet for the performance of worship in a quiet spot vested for the time being in the assembly exclusively. Assemblies held for religious worship, or for the performance of religious ceremonies, are hereby protected from intentional disturbance. Obstruction of a religious procession taken out after obtaining the permission of the public authorities is an offence under this section *(12 CrLJ 573).*

(2) The chief elements of the offence under the section are as follows:

(a) There must be an assembly engaged in the performance of religious worship or religious ceremonies.

(b) The accused must cause disturbance to such assembly.

(c) The accused must do so voluntarily.

(d) The assembly must be lawfully engaged in the performance of religious worship or religious ceremonies. *(1885) ILR 7 ALL 461.*

(3) The section is applicable to any one who causes the disturbance. Persons who are themselves engaged in the performance of religious worship or religious ceremonies can be guilty under this section. *AIR 1943 Nag 199.*

2. "Voluntarily".—(1) Even in the absence of an active intention to cause disturbance to an assembly engaged in the performance of religious worship, the accused would be guilty of an offence under this section where he has actually caused disturbance to such assembly by his act if at the time when he did the act he knew that he was likely thereby to cause disturbance to the religious assembly. *(1910) 11 CriLJ 400.*

3. "Assembly lawfully engaged in performance of religious worship or religious ceremonies".—(1) In order that this section may apply the assembly must be actually engaged in the performance of religious worship or religious ceremonies when the alleged disturbance is caused. Disturbance during an interval in a worship or prayer is not covered by this section. *(1885) ILR 7 All 461 (FB).*

(2) The mere fact that when a religious procession is passing a mosque the music is stopped does not mean that the procession is not actually engaged in religious worship at that time. *AIR 1949 Nag 132.*

4. "Assembly".—(1) Under this section, special protection is given only to congregational and not individual worship *(1883) ILR 6 Mad 203.*

(2) Even three persons are enough to constitute an "assembly" within the meaning of this section. *AIR 1940 All 291.*

5. Religious processions.—(1) A religious procession can be regarded as an assembly lawfully engaged in the performance of religious worship and voluntarily causing disturbance to religious procession will be an offence under this section. *(1890) ILR 12 All 495.*

(2) There is no legal right to take a procession through private property unless such right is established by some proof. *AIR 1933 Oudh 196.*

6. "Disturbance", what constitutes.—(1) Merely spreading a false rumour which leads to a religious procession to come to an end of its own accord is not causing a "disturbance" within the meaning of this section. *AIR 1919 All 188 (2) (189): 20 CriLJ 421.*

(2) Merely uttering the word "amin" in a loud tone according to tenets of accused's sect, during prayer in a mosque, while the majority of the congregation utter it in a low tone according to the tenets of their sect is not an offence under this section. *(1891) ILR 13 All 419.*

7. Music before mosque.—(1) Where a mosque is abutting on a highway, going in a procession with music at a time when prayer is going on in the mosque will be an offence as such music must necessarily disturb the congregation engaged in the prayer. *(1910) 11 CriLJ 400.*

(2) The playing of music before a mosque is not an offence when it is done at times agreed upon between the communities. *AIR 1945 Mad 496.*

8. Procedure.—(1) Where several accused are charged under Ss. 143 and 296, the case of each accused is to be considered individually. *1961 BLJR 347.*

(2) Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

9. Practice.—Evidence—Prove: (1) That there is existence of the assembly in question.

(2) That such assembly was at the time of the offence engaged in performing religious worship or ceremony.

(3) That the assembly being engaged in such performance was lawful.

(4) That the accused caused disturbance of such assembly when so engaged.

(5) That the accused did so voluntarily.

10. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—voluntarily caused disturbance to an assembly to wit—lawfully engaged in the performance of religious worship (or religious ceremonies): and thereby committed an offence punishable under section 296 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 297

297. Trespassing on burial places, etc.—Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the

religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cases and Material: Synopsis

1. *Scope*
2. *"With the intention .... insulted thereby".*
3. *"Commits any trespass".*
4. *"Place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead".*
5. *"Indignity to human corpse".*
6. *"Causes disturbance to any persons assembled for the performance of funeral ceremonies".*
7. *Charge.*
8. *Procedure.*
9. *Practice.*

1. Scope.—Place reserved for burial or cremation of the dead are regarded as sacred. Intention or knowledge is an essential ingredient of the offence under this section *(14 CrLJ 117)*. The act of a person who destroys or disturbs a place of sepulture with the intention of wounding the feelings of any other person amounts to trespass. Section 297 fully deals with offences to which it refers and is self-contained and required no interpretation by reference to section 441. Where the accused entered the mosque for prayer and abused everyone present there, no offence under this section can be said to have been committed. Persons having sexual intercourse with a woman inside a mosque were held guilty of an offence under this section *(24 CrLJ 711)*.

(2) Cutting shrubs from grave-yard—Guilty of trespass. Accused cutting shrubs from the grave-yard and erecting a hedge around it in order to prevent people of neighbouring hamlet from burying their dead body—Accused guilty of trespass. *1953 PLD (Pesh) 62.*

(3) The essence of Sec. 297 is an intention, or knowledge of likelihood, to wound feelings or insult religion and when with that intention or knowledge trespassing on a place of worship is committed the offence is complete. *Rujkishore Shil Vs. Roshan Ali & ors. 5 BSCD 37.*

2. "With the intention .....insulted thereby".—(1) The section does not refer only to intention. It also refers to knowledge of likelihood of feelings being insulted etc. *AIR 1941 Sind 33.*

(2) Though the section does not refer to the religious feelings, the kind of feelings which come within the section is clearly limited in its nature by the second paragraph by reference to feelings of a spiritual nature rather than of a material kind,—feelings associated with sacred places. It does not punish acts, which are merely earthly vanity or pride. *AIR 1941 Sind 33.*

(3) The accused entered the house of the complainant, demolished the wall which he was constructing and took away the pindi of Naika Gossain worshipped by the complainant and his family from the niche and threw it into a drain. It was held that the accused was guilty under this section. *AIR 1940 Pat 414.*

3. "Commits any trespass".—(1) Before a person can be convicted under this section it must be proved that there was a trespass by him with the intention and in the place mentioned in the section. *AIR 1920 Pat 349.*

(2) Where A was found in a mosque having sexual intercourse with a woman B. Both were held guilty under this sections. *AIR 1924 All 9.*

(3) The fact that the accused were the sole owners of the land did not render their action in damaging the structure erected over the graves of the complainant's relations any the less a trespass within the meaning of the section even though they had been placed in possession of the land by the Civil Court. *AIR 1932 Cal 459.*

(4) From the mere fact that the accused was a trustee of a mosque it cannot be said that he could not commit trespass on the property. *AIR 1924 Rang 106.*

4. "Place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead".—(1) It is not necessary that the trespass was committed on a place set apart for the funeral rites or as a depository for the remains of the dead. Even trespass on any place of sepulture is sufficient. *(1909) 10 CriLJ 160.*

(2) Where the accused is charged with having ploughed the family grave-yard of the complainant, there must be evidence and proof of the land or any part of it having been set apart as a "depository for the remains of the dead". In the absence of such proof, the accused cannot be convicted under this section. *1976 CriLJ 943.*

5. "Indignity to human corpse".—(1) The accused who formed part of the committee whose duty it was to collect subscription to defray cost of erecting a wall round a cemetery stopped a corpse at the gate and demanded a fee before admitting it into the cemetery and some discussion ensued between the parties during which the corpse was placed on the ground but later the party bearing the corpse was admitted without any payment. It was held that there was no indignity offered to the corpse within the meaning of the section. *1 Weir 287.*

(2) Where certain persons prevented the grave diggers from digging a grave for the corpse of the complainant's son on account of the complainant not having joined the Khilaphat party it was held that they could not be held to have offered indignity to the corpse. *AIR 1922 All 184.*

6. "Causes disturbance to any persons assembled for the performance of funeral ceremonies".—(1) The word 'disturbance' implies some active interference in, or hindrance to, the performance of the funeral ceremonies. *AIR 1919 Lah 433.*

(2) Where the accused came to the cremation ground and told the complainant and his relatives not to cremate the body of their grand-daughter-in-law, it was held that the mere utterance of the words "do not cremate the body" unaccompanied by any attempt to prevent the cremation or to interfere if the cremation was persisted in was not a disturbance within the meaning of the section. *AIR 1919 Lah 433.*

7. Charge.—(1) Where charge was framed under the first clause of the section and the finding was that a case under the second clause was made out the conviction is liable to be set aside as the ingredients of the offence under the first clause were not proved. *1971 CriLJ 1008 (Cal).*

(2) The charge should run as follows:

I, (name and office of the Magistrate, etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—committed trespass in (name of the place of worship or name of the place where the sepulture situated or a place set apart for the performance of funeral rites or a depository of the remains of the dead) offered an indignity by (specify the indignity to the corpse of or caused disturbance to persons assembled) (enumerate the persons for the performance of funeral ceremonies) with the intention or wounding the feelings of (name of the persons whose feelings were wounded or of insulting the religion of or with the knowledge that the feelings are likely to be wounded and you have thereby committed an offence punishable under section 297 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

8. Procedure.—(1) An offence under this section cannot be treated as a minor offence with respect to an offence under S. 295, as the former contains an additional ingredient of trespass. Hence an accused charged under S. 295 cannot, by virtue of S. 222, Criminal P.C., be convicted under this section. *AIR 1952 All 878.*

(2) Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

9. Practice.—Evidence—Prove: (1) That the accused had the intention to:

(a) wound the feelings of any other person, or

(b) to insult the religion of any person; or

(c) had the knowledge that;

(i) the feelings of any person is likely to be wounded, or

(ii) that the religion of any person is likely to be insulted.

(2) That the place trespassed was a place of worship or of burial place or of the remains of the dead. or

(3) That the accused trespassed upon such a place or offered any indignity to a human corpse or disturbed persons assembled for funeral ceremonies.

Section 298

298. Uttering words, etc. with deliberate intent to wound religious feelings.—Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cases and Materials: Synopsis

1. *Scope of the section.*
2. *"With the deliberate intention".*
3. *"Religious feelings".*
4. *Procedure.*
5. *Practice.*
6. *Charge.*

1. Scope of the section.—(1) The offence under this section consists in the deliberate intention of wounding the religious feelings of other persons by uttering any word or making any sound to be hearing of that person or making any gesture in the sight of that person or placing an object to wound that person's religious feelings. The deliberate intention must be interred from the words spoken, the place where they were spoken, the persons when they were spoken and other surrounding circumstances. No direct evidence may be addressed to establish intention. Deliberate intention to wound the religious feelings of a section of the public has to be established. Cow slaughter without a deliberate intention to wound the feelings of Hindus may not be an offence.

(2) Ingredients of murder and culpable homicide stated to elaborate the point. It has been held in the decision reported in *1987 BLD (AD) 165* that "all murders are culpable homicide but all culpable homicides are not murder". Excepting the General Exceptions attached to the definition of murder an act committed either with certain guilty intention or with certain guilty knowledge constitutes culpable homicide amounting to murder. If the criminal act is done with the intention for causing death then it is murder clear and simple. In all other cases of culpable homicide it is the degree of probability of death from certain injuries which determines whether the injuries constitute murder or culpable homicide not amounting to murder and if death is the like result of the injuries it is culpable homicide

not amounting to murder; and, if death is the most likely result then it is murder. *Momin Maitha Vs. State 41DLR 37.*

(3) See *3 BLC(AD) 171; 1990 BLD 452.*

(4) The section punishes uttering of words, etc., with the deliberate intention of wounding the religious feelings of others. The section is much wider in scope than S. 295 and includes any action which is known to wound the religious feelings of others while s. 295 is limited to certain specified kinds of acts. *AIR 1937All 13.*

2. "With the deliberate intentions".—(1) The essence of the offence under the section consists in the deliberate intention of wounding the religious feelings of others and mere knowledge of the likelihood that the religious feelings of others may be wounded is not sufficient to bring the act of the accused within the mischief of this section. *AIR 1963 Orissa 23.*

(2) Where the intention to wound the religious feeling was not conceived suddenly in the course of discussion but was pre-meditated , deliberate intention may be inferred. *AIR 1952 Orissa 149.*

(3) It is no defence to proceedings under this section that the religious feeling were deliberately shocked or wounded by the accused in order to draw attention to some matter in need of reform. *AIR 1939 Rang 199.*

(4) Motive is not to be confused with intention. If a man knows that a certain consequence will follow from his act it must be presumed that he intended that consequence to take place though he may have some different ulterior motive for performing the act. Thus if an accused kills a cow in the presence of Hindus he must have known that it would lead to wounding of their religious feelings. *AIR 1937 All 13.*

(5) Where the accused had caused the slaughter of a bullock on Bakrid day in an open public place in spite of the protest of and in the presence of Hindus the accused must be taken to have deliberately intended to wound the religious feelings of such Hindus and is guilty under this section and cannot claim the protection of Art 25(1) of the Indian Constitution. *AIR 1965 Tripura 22.*

3. "Religious feelings".—(1) Religious feelings can mean nothing more or less than feelings associated with a person's religious ideas. Although instances of cow sacrifice may be found in the Hindus scriptures it is well-known that the idea of cow slaughter is abhorrent to the Hindus in general. *AIR 1965 Tripura 22.*

4. Procedure.—(1) Sanction of the Govt. under S. 196 (1) Cr. P.C. is not necessary in the case of an offence under S. 298. *1981 CriLJ 113.*

(2) Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

5. Practice.—Evidence—Prove: (1) That the accused uttered some words or made some sounds to the hearing of the complainant or made a gesture in the presence of the person or placed any object in the sight of the complainant.

(2) That he did so intentionally and deliberately.

(3) That the intention was to wound the religious feelings of any other person.

6. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.,) hereby charge you (name of the accused) as follow:

That you, on or about the—day of—at—uttered the words (specify them) to the hearing of (name of the persons) or made a sound (namely) to the hearing of our made gesture in the sight of and placed an object in the front of some person (with the deliberate object) intending to wound the religious feelings of the persons and thereby committed an offence punishable under section 298 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.