CHAPTER XXIV
GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

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

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

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

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

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

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

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

338. Power to direct tender of pardon.— At any time before the judgment is passed, the Court of Session trying the case may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order of the District Magistrate to tender, a pardon on the same condition to such person.

339. Trial of person to whom pardon has been tendered.— (1) Where a pardon has been tendered under section 337 or section 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such tender has, either by willfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made such person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

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

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

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

339A. Procedure in trial of person under section 339.— (1) The Court trying under section 339 a person who has accepted a tender of pardon shall —

(a) if the Courts is Court of Sessions before the charge is read out and explained to the accused under section 265D, sub-section (2), and

(b) if the Court is the Court of Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

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

[2][**339B. Trial is absentia** :— [3][(1) Where after the compliance with the requirements of section 87 and section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prosect of arresting him, the Court taking cognizance of the offence complained of shall, by order [4][published in at least two national daily Bengali newspapers having wide circulation] direct such person to apear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence].

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

Note

TRIAL IN ABSENTIA

On the 21st day of August,1982 a new procedure in the histoy of criminal trial has been introduced by inserting Section 339B in the Code of Criminal Procedure, vide Ordinance No.XXIV of 1982 providing for holding trial in the absence of the accused.

The section contains two sub-sections

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2. By ordn XXIV of 1982 ; w. e. f. 21 - 8 - 82

3. By ordn LX of 1982 ; w. e. f. 30 - 12 - 82

14. Subs. by Act XVI of 1991 w. e. f. 12 - 2 - 91

Sub-section (I)deals with those accuseds who did never appear in court or whose attendance could not be secured even by issuing warrant of arrest and by publishing written proclamation u/s 87 and attachment of proporty u/s88 Cr. P.C.and sub-section (2) deals with those accuseds who once appeared in court but subsequently being enlarged on bail or otherwise have been absconding.

With respect to the accuseds falling under sub-section (I) the following steps are to be taken before trial in their absence is taken up:—

(i) It is to be scrutinised that requirements of sections 87 and 88 have been complied with;

(ii) Thereafter Notices are to be given directing them to appear in court on or before a given date otherwise trial will be held in their absence; and

(iii) Such Notices are to be published in at least two Bengali daily newspapers having wide circulation.

This task of publication of Notice in the newspaper has been assigned to the court taking cognizance of the offence. So, cases triable by the higher Courts are to be sent on completion of such publication of Notices and after expiry of the date so mentioned in such Notices. This relates to cases cognizance of which is taken by Magistrates u/s 193of the Cr. P.C. But with respect to cases cognizance of which is taken by the Special Courts or Tribunals under some special statutes, such as, the Special Powers Act. 1974, the Nari-O-Shishu Nirjatan (Bishesh Bidhan)Ain.1995, etc. the publication of Notification and the prior formalities under section 87 and 88 of the Cr.P.C. are to be done at the instanceof the Special Courts or the Tribunals, as the case may be, because, these steps succeed and not precede taking of cognizance. It may be made here clear that with regard to offences triable under the provisions of special statutes the special courts or the Tribunals which are competent to try the cases are the competent courts to take cognizance and that if any Magistrate takes cognizance as is done in sessions cases U/S. 193 Cr. P.C. it would be an act beyond jurisdiction (42 DLR 375,43 DLR 529 and 43 DLR 387).

In the case of accuseds falling under sub-section (2) no such notice or step as mentioned in Sub-section (1) will be required and in their case the court shall proceed with the trial in absentia, after recording its decision so to do. This is because in such a case the accuseds are in the know of the case against them and so, there is no necessity of intimating them about the case once again.

The provision of Section 339B is also applicable in the pending cases trial of which commenced before 21.8.82 u/s 35(c) of ordinance XXIV of 1982, i.e. this provision has been given restrospective effect.

It is important to note here that in sending cases to the higher courts for trial the Magistrates shall fix up a period within which the accuseds who are on bail,

to appear before theose courts. In the absence of such direction if the accuseds being in darkness about the transfer of the case and the date of trial and therefore remain absent in the court they cannot be treated to be in abscondence as envisaged u/s 339B(2) Cr. P.C. and trial in their absence would be illegal.The trial court should also see that a date in such cases is given directing the absentee accuseds to appear and also directing the sureties to produce the accuseds on that date and if on that date the accuseds do not appear, trial may be taken up in absentia. Ref: 36 DLR(Ctg) 263.

In this context the following matters deserve due consideration:—

In Sub-section (2) the expression "the accused person absconds or fails to appear"— is very significant. The wordings"fails to appear" have relieved the courts from being satisfied that the accused is absconding or that his absence is on genuine ground; rather, the courts have been given the competency to proceed with the case even if an accused, who was present, is found absent on any occasion and this is necessary, because, trial of a case is to be completed within the time-limit.

It may be mentioned here that the ruling reported in 36 DLR(Ctg)at page 263 has been given in a peculiar circumstance and that in such circumstances a decision to that effect for dispensation of substantial justice was called for. But it would, I think, be wrong to apply the said principle in all the cases of occassional absence of an accused for the reason that in such a case we would be ignoring the legislative intent expressed in the wordings"or fails to appear" and secondly, we would be yielding to the sharp practices of the accused persons to swallow up the time limit without allowing the court to complete the trial. For example, in a case where there are number of accuseds and if one of them remains absent on one date and the court fixes up another date to give him a chance and on the next date the said accused appears but another reamins absent and for him the court again adjourns the case, and so on, then the accuseds will very well succeed in their tricks to frustrate trial of a case. Law makers being alive to this situation have laid down the provision that trial of a case shall continue even if the accuseds fail to appear on any occassion.

Defence Counsel for absentee accused:

'Accused being enlarged on bail, absconded. Trial began in his absence u/s 339B(2). The case u/s 302 P.C. ADJ Faridpur sentenced him to DEATH. NO DEFENCE COUNSEL WAS APPOINTED. Held, the sentence is not sustainable in law and the court ordered for retrial on apointment of State defence and giving him an opportunity to cross examine the witnesses' 36 DLR(Dha)333.

Chapter XII of the Legal Remembrancer's Manual, 1960 provides; every person charged with an offence attracting death penalty shall have legal assistance at his trial and the Court should provide an advocate or pleader for the defence unless they certify that accused can afford to do so.

Some important rulings are quoted for guidance:

It is desirable in the interest of administration of justice that witnesses be summoned on a day when the court is in a position to examine them. No adjournment at the instance of any party should be allowed causing inconvenience to witnesses. Practice of adjourning criminal trial frequently on the prayer of the defence in spite of apppearance of prosecution witnesses on the ground of absence of any accused overlooking the provision of section 339B.Cr.P .C. is contrary to law and should be discontinued. 45 DLR117.

Accused facing trial on capital charge is entittled to be defended by a lawyer even if the trial is held in absentia. It is the responsibility of the court to appoint a lawyer for absentee accused. 42 DLR94.

Failure to publish the order in at least one(now two) Bengali daily newspaper is violative of the provision of section 339B Cr. P.C. and also of the principle of natural justice. 42DLR 162.

47 DLR 61: Baharuddin Vs. The State—

Since section 339B(2) provides for absentia trial. section 512 has no application in the case of an accused who appeared before the court but thereafter absended.

339C. Time for disposal of cases: —

(1) A Magistrate shall conclude the trial of a case within [16][one hundred and eighty days] from the date on which the case is received by him for trial.

(2) A sessions Judge, an Additional Sessions Judge or an Assistant Sessions Judge shall conclude the trial of a case within [16][three hundred and sixty days] from the date on which the case is received by him for trial.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where a person is accused in several cases and such cases are brought for trial before a Magistrate or a court of sessions, the time limit specified in sub-section (1) or sub-section (2) for the trial of such cases shall run consecutively.

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16. By subs by Act XLII of 1992. W.e.f 1.11.92

[12][(2B) Notwithstanding the transfer of a case from one Court to another Court, the time specified in sub-section (1) or sub-section (2) shall be the time for concluding the trial of a case.]

(3) Omitted by Act.LXII of 1992 w.e.f. 1.11. 92

[14][(4) If a trial cannot be concluded within the specified time, the accused in the case, if he is accused of a nonbailable offence, may be released on bail to the satisfaction of the court, unless for reasons to be recorded in writing, the court otherwise directs.]

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

[16][(6) In this section, in determining the time for the purpose of a trial :—

(a) Omitted by Act LXII of 1992; w.e.f 1. 11. 92

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

Note

TRIAL AND TIME LIMIT

Ordinance No. XXIV of 1982 introduced time limit in the disposal of criminal cases with effect from 21.8.82. The period for disposal of a case has been changed several times and ultimately rested at 180 days in case of trial by a Magistrate and at 360 days in case of trial by a Court of Sessions vide Act No.XLII. of 1992 with effect from 1.11.92.

However, originally time for conclusion of a trial was 30 days in case of trial by Magistrates and 60 days in case of trial by the court of sessions. Subsequently it was extended to 60 days and 120 days resectively vide Ordinance No.LX of 1982 which was further amended by allotting 120 days and 240 days respectively vide Ordinance No. XXIII of 1986. And this was also modified by inserting sub-section (6) by ordinance No. XXXVII of 1983 laying down the provision that in determining the time only the working days are to be counted. This changes by way of extending the period of trial and direction to count the period in terms of working days speak of the anxiety of the law makers to get more cases tried instead of release of great number of accuseds without trial. Sub-section (6) was

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12. By Ordn. XXIX of 1985; w.e.f. 25. 6. 85

14. Subs. by Act. XVI of 1991; w.e.f. 1. 4. 91.

16. Subs by Act. XLII of 1992; w.e.f. 1. 11. 92.

again substituted by bringing in the earlier provision into clause (a) regarding counting of time in terms of working days and by adding clause (b) with direction not to count the period passed in taking steps against an accused who absconded going on bail in determing the time for trial.

Number of rulings have by now come up resolving the debatable questions regarding, working days, counting of working days, etc. Opinions were also differing on the point as to whether working days should be counted afresh by the transferee courts on and from the date of receipt of the records or whether the period for trial is to be strictly adhered to irrespective of the court which ultimately disposes of the case and their lordships have also decided this point holding that time to conclude a case will run from the date of receipt of a record by the transferee court and this left the scope to give life to a dying case by transferring the same to another court and it virtually made the time-limit a nugatory one. Keeping this in view sub-section (2B) has been inserted by Act XVI of 1991 with effect from 1-4-91 embodying the provision that 180 days and 360 days time in case of trial by the Magistrates and the courts of sessions shall be the time to conclude trial of a case without having regard to the transfer of the case from one court to another.

Further, counting of time in terms of working days has been omitted by Act XLII of 1992 and provision has been made for enlargement of the accused on bail in the event trial is not concluded within the specified period.

So, at the present, law relating to time-limit in the disposal of cases stands as follows :—

(a) Magistrates are to conclude trial of a case within 180 days from the date of receipt of the case for trial;

(b) The Courts of Sessions are to conclude trial of cases within 360 days from the date of receipt of the record;

(c) The period for conclusion of trial cannot now be extended;

(d) Summary trials are also to be completed within 180 days;

(e) Time is to be counted in terms of calender days and not in terms of working days;

(f) The days spent in taking steps for proceeding against an accused who is in absconsion being on bail is to be excluded in determining the time for the purpose of trial;

(g) Failure to conclude trial of a case within the time does not follow with any judicial consequences. Earlier in such circumstances accuseds had to be released and cases stopped;

(h) Failure to conclude trial of a case within the time-limit having been not following with any judicial consequences the time-limit has become a DIRECTORY and not a mandatory provision;

(i) In view of the directory nature of the time-limit the question of revival of the case does not arise and so, section 339D has been omitted;

(j) Time-limit is not applicable in gang cases u/s 400 and 401 of the Penal Code and also in cases of lunatics under chapter XXXIV of the Cr. P.C.;

(k) In the case of a person accused in several cases time-limit will run consecutively, that is, with the commencement of trial of a particular case, the time-limit in respect of other cases shall remain suspended and shall start only upon conclusion of trial of the said case and so on;

(l) With respect to cases which are pending for trial since before 21.8.82 (the date on which time limit came into force) the same are to be disposed of within 360 days under section 35(c)of Ordinance 24 of 1982. This provision being directory in nature since its inception some of such cases may yet be awaiting completion.

How to count time : Time shall run from the date on which a particular case will be received by a Magistrate for trial.

A Magistrate taking cognizance of an offence maintains two files—General File and Trial File. On taking cognizance of an offence if the Magistrate decides to try the case by himself, he shall pass an order taking the case to his trial file and the time will run from that date. With regard to others it would be the date on which the record of a particular case would be received by them for trial. So, on receipt of a case the trying court shall pass an order with the date stating that 'the record is received today for trial' and 180 days time will be counted from that date for completion of the trial irrespective of the court which ultimately disposes of the same. This means subsequent transfers, if any, of the case from one court to another or the change of Magistrate will have no bearing whatsoever upon the period of 180 days for disposal of the case.

With respect to the court of sessions the time shall run from the date on which the sessions Judge receives the record of a particular case for trial and 360 days time to conclude the trial shall run from that date whether the case is tried by the Sessions Judge or the Additional Sessions Judge or the Assistant Sessions Judge.

Pending case :

Apart from Section 339C which has been embodied in the Code, the Ordinance XXIV of 1982 has also made provision for the disposal of pending

cases under Section 35 of the said Ordinance. The provisions being transitory in nature, likely to wither away with the disposal of all the pending cases, the same has not been incorporated in the Code. The section runs as follows :—

Section 35. Transitory Provisions :— Notwithstanding anything contained in any other law for the time being in force or in any amendment in the said Code by this Ordinance.

(a) any case other than an appeal which, immediately before the commencement of this Ordinance, was pending in a Court of Sessions and is triable by a Metropolitan Magistrate or a Magistrate of the first class under the provisions of the said Code as amended by this Ordinance shall-

(i) if trial of such case has already commenced, be disposed of by the court as if no such amendment had been made;

(ii) if trial of such case has not already commenced, on such commencement, stands transferred for disposal to the Metropolitan Magistrate or the Magistrate of the first calss as the case may be having jurisdiction to try the case;

(b) any appeal of a person convicted on a trial held by any Magistrate of this second or third class which, immediately before the commencement of the Ordinance, was pending before any Sessions Judge, Additional Sessions Judge, or Assistant Session Judge shall, on such commencement, stands transferred for disposal to the District Magistrate having jurisdiction to hear the appeal;

(c) any case including an appeal, other than a case or appeal in respect of an offence under section 400 or section 401 of the Penal Code (Act XLV of 1860), which, immediately before the commencement of this Ordinance, was pending in any court, including the Supreme Court, shall be disposed of within a period of one hundred and eighty days from the date of such commencement (later, the period has been extended to 360 days).

339D. Ommitted by Act. XLII of 1992 ; w. e. f. 1. 11. 92.

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

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

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

Provided that -

(a) he shall not be called as a witness except on his own request in writing; or

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any persons charged together with him at the same trial.

341. Procedure where accused does not understand proceedings.— If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than High Court Division, if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court Division with a report of the circumstances of the case, and the High Court Division shall pass thereon such order as it thinks fit.

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

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them: but the Court may draw such inference from such refusal or answers as it thinks just.

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

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

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

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

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

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

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

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

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words, etc. with deliberate intent to wound the religious feelings of any person.	298	The persons whose religious feelings are intended to be wounded.

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or continuing any person.	341, 342	The person restrained or confined.
Assault or use of criminal force.	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass House trespass	447 448	The person in possession of the property trespassed upon.
Criminal breach of contract of service	490,491,492	The person with whom the offender has contracted.
Adultery Enticing or taking away or detaining with criminal intent a married woman.	497 498	The husband of the woman.
Defamation Printing or engraving matter knowing it to be defamatory.	500 501	The person defamed.

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

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

1	2	3
[2][Rioting.	147	The person against whom force or violence has been used.
Rioting armed with deadly weapon.	148	Ditto].
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	Ditto.
Voluntarily causing grievous hurt on grave an sudden provocation.	335	Ditto.

2. *Ins. Ordn. XXIV of 1982; W.e.f.21.8.82*

[2][Act endangering human life or the personal safety of others.	336	Ditto].
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligenly as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining for ten or more days.	344	Ditto.
Wrongfully confining a person in secret.	346	Ditto
[3][Wrongful confinement to extort property or constrain to illegal act.	347	The person wrongfully Cofined.
Wrongfully confinement to extort confession or compel restoration of property.	348	Ditto].
Assault or criminal force to women with intent to outrage her modesty.	354	The women assaulted or to whom the criminal force was used.
[3][Assault or criminal force in attempt to commit theft of property worn or carried by a person	356	The person assaulted or to whom criminal force is used].

2. *By Ordn. XXIV of 1982 ; w. e. f 2- 8 - 82.*

3. *By Ordn. LX of 1982 ; w. e. f. 30 - 12 - 82*

1	2	3
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
[2][Theft.	379	The owner of the property stolen].
[2][Theft in dwelling house.	380	The owner of the property stolen].
[3][Theft by clerk or servant of property in possession of master	381	Ditto].
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
[3][Criminal breach of trust	406	The owner of the property in respect of which the breach of trust has been committed.
[3]Criminal breach of trust by a carrier, wharfinger, etc.	407	Ditto.
[3]Criminal breach of trust by a clerk or servant.	408	Ditto.
[3]Dishonestly receiving stolen property, knowing it to be stolen	411	The owner of the property stolen.
[3]Assisting in the concealment or disposal of stolen property, knowing it to be stolen.	414	The owner of the property stolen].
Cheating.	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	Ditto.

2. *By Ordn. XXIV of 1982 ; w. e. f 2- 8 - 82.*

3. *By Ordn. LX of 1982 ; w. e. f. 30 - 12 - 82*

1	2	3
Cheating by personation	419	Ditto
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	421	Ditto.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	The person affected thereby.
Fraudulently execution of deed of transfer containing false statement of consideration.	423	Ditto.
Fraudulent removal or concealment of property.	424	The owner of the animal].
[3][Mischief by killing or maiming animal	428	The owner of the cattle or animal].
[3][Mischief by killing or maiming cattle, etc.	429	The person to whom the loss or damage is caused.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person is possession of the house trespassed upon.
House trespass to commit an offence (other than theft) punishable with imprisonment.	451	

3. *By Ordn. LX of 1982 ; w. e. f. 30 - 12 - 82*

1	2	3
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	The person whose trade or property mark is counterfeited.
[2]Cohabitation caused by a man deceitfully including a belief of lawful marriage.	493	The woman with whom cohabitation was caused.
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.
Attempting to commit offences punishable with transportation or imprisonment.	511	The person against whom such attempt was made for committing the offence

2. By Ordn. XXIV of 1982 ; w. e. f. 21 - 8 - 82

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

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

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

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

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

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

Note

Ordinance XXIV of 1982 has made some of such offences compoundable which were earlier not compoundable and Ordinance No. LX of 1982 has widened the scope of composition of offences by removing the preconditions which were levelled earlier.

By Ordinance No. XXIV of 1982 section 147,148,336,347,348,356,380,393 and 511 of the Penal Code have been made compoundable and with respect to Sections 406, 407 and 411 of the Penal Code valuation of the stolen property was raised from Tk. 500.00 to Tk. 5,000.00 and there by the arena of compromise regarding these three kinds of offences had been enlarged. Again, by Ordinance No. LX of 1982 the same has been widened more by removing all such preconditions in the composition of offences under Section 379,381,406.407. and 411, 414.428 and 429. of the Penal Code.

Previously, the Section 379,381,414 were compoundable if the value of the stolen property was upto Tk. 500.00 and the Sections 406,407 and 411 when valuation was upto Tk. 5000.00. But now all such offences may be compounded irrespective of the valuation of the stolen property.

It is important to point out here that offences as mentioned in Section 345 are compoundable at the instance of the persons shown in the third column of the table and that such composition does not require permission of the court if the offences come under sub-section (1) but permission of the court before which the case is pending requires to be taken in the case of offences mentioned in Sub-section (2). Such permission may be granted liberally provided the court is satisfied that the parties have, in fact, come to a compromise, because law encourages such compromise (For principle the ruling reported in 38 DLR (AD) 38 and 37 DLR (AD) 240 may be gone into).

Compoundable offences may be compounded even at the stage of Appeal or Revision with permission of the appellate court or that of the court of revision.

The composition of an offence under the section shall have the effect of an ACQUITTAL of the accused.

346. Procedure of Magistrate in cases which he cannot dispose of.— (1) If, in the course of an inquiry or a trial before a Magistrate in any district the evidence appears to him to warrant a presumption that the case is one which should be tried or sent for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

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

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

348. Trial of persons previously convicted of offences against coinage, stamp-law or property.— (1) Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for sending the accused be sent to the Court of Session or unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted :

Provided that, if any Magistrate in the district has been invested with powers under section 29C, the case may be transferred to him instead of being sent to the Court of Sessions.

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

349. Procedure when Magistrate cannot pass sentence sufficiently severe.— (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

(1A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate.

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

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3. By Ordn. LX of 1982; w.e.f. 30.12.82.

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

[3][**349A. Conviction on evidence partly recorded by one Sessions Judge, etc., and partly by another.**— (1) Whenever any Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, after having heard and recorded the whole or any part of the evidence in a trial, ceases to excise jurisdiction therein, and is succeeded by another Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, as the case may be, who has and who exercises such jurisdiction, the Judge so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the trial :

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

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

Note

By this new insertion right of the accused to claim denovo trial in sessions cases has been abolished. With respect to other cases, this right had already been abolished by the Law Reform Ordinance (Ordinance XLIX of 1978).

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

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3. By Ordn. LX of 1982 ; w. e. f. 30 - 12 - 82

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

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

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

350A. Changes in constitution of Benches.— No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under sections 15 and 16, and the Magistrates constituting the same have been present on the bench throughout the proceedings.

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

(2) When the detention takes place after a trial has been begun the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard.

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

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

CHAPTER XXV

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

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

Note

[***][1]Here the figure and comma "XXI" was there which has been omitted by second amendment of 1982 (ordn. No. XXIV of 1982) and now the section stands as above. This omission became necessary in view of the abolition of Trial under Warrant Procedure. Chapter XXI dealt with "Trial of Warrant cases by Magistrates."

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

355. Record in trials of certain offences by first and second class Magistrates.— (1) [2][In cases tried under Chapter XX or Chapter XXIII] by a Magistrate of the first or second class and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

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

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

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2. By Ordn. XXIV of 1982; w.e.f. 21.8.82.

**** Chapter XXI Omitted by Ordn. XXIV of 1982.*

Note

The amendment of the section stands in the following terms :—

(a) In the marginal heading the words "in summons cases and" have been omitted.

(b) In sub-section (1) for the words, figures, brackets, letters and commas "In Summons-Cases tried before a Magistrate and in cases of the offences mentioned in sub-section (1) of section 260, Clauses (b) to (m) both inclusive, when tried" have been substituted by the words and figures "In cases tried under Chapter XX or Chapter XXII". This amendment became necessary in view of omission of Chapter XXI.

under the amendment Magistratges are to record substance of the deposition of the witnesses in all cases. This is quite alarming in view of the fact that making a memorandum of the substance of the evidence of witnesses is a tough task which cannot squarely be done unless one has the mastery shrouded with sufficient experience in the trial of cases and over the subject (Law) one would be dealing with. In this context it is quite correctly thought of that recording deposition in verbatim is easier than making a memorandum of the substance thereof.

Evidence of witnesses are taken down in the mouth of the depenent(is first person) and in the way he speaks out. It is being advised always to take down at least the deposition of the witnesses in Bengali so that the spirit of colloquel expressions do not have the scope to slip attention of the courts. Under the circumstances a gist of the evidence of a witness is apt to screen many things from the courts—the original, the appellate as well as the higher courts and consequently justice is prone to be frustrated in most of the cases.

So, for the sole purpose of speedy disposal of cases let us not burry justice by our hurriedness and it is expected that the section may be amended laying down a procedure for recording the evidence of witness in verbatim at least with respect to such offences which are punishable with imprisonment for a term of more than six months.

However, it may be mentioned here that inview of the option given by section 358 it would not be illegal if the deposition of witnesses are recorded word for word in a narrative form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

361. Interpretation of evidence to accused or his pleader.— (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language understood by him.

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

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

362. Record of evidence in Presidency Magistrate Court. Omitted by A.O., 1949 Sch.

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

364. Examination of accused how recorded.— (1) Whenever the accused is examined by any Magistrate, or by any Court other than High Court Division the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in Englishless: and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

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

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

365. Record of evidence in High Court Division.— The Supreme Court shall from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the evidence shall be taken down in accordance with such rule.

CHAPTER XXVI
OF THE JUDGMENT

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

(a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, or in some other language which the accused or his pleader understands:

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

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

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

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

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

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

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

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

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

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

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

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

369. Court not to alter judgment.— Save as otherwise provided by this Code or by any other law for the time being in force no court when it has signed its judgment, shall alter or review the same, except to correct a clerical error.

Note

Review of Criminal Judgement:

Can a court including the High Court Division and also the Appellate Division review its judgement ? To get the answer we may fall back upon section 369 of the Cr. P.C. which runs as follows :—

"Court not to alter judgment: Save as otherwise provided by this Code or by any other law for the time being in force no court when it has signed its judgement shall alter or review the same, except to correct a clerical mistake".

The language of the section is very clear and it prohibits a judge to alter or review its judgement after signing of the same. It is said that a court becomes functus officio after pronouncement of judgement and consequently a court cannot touch its own judgement after its pronouncement even if it transpires that the decision suffers from error of law. Judgement can only be altered, varied or set aside by the competent appellate court and the rest of the world shall obey the same. However, clerical errors can be corrected but this cannot be done by setting aside the judgement already pronounced.The correction must be of clerical errors and nothing more.

In the face of such strong prohibition there appears some accrobatical accesses as it occurred in the case of Chandraika....Vs....Rex reported in AIR1949 (All) 176 and also in the case of Ram Das.....Vs.....State reported in AIR 1952(All)926.In the Ist case rehearing was allowed as the appeal was decided before the fixed date in the absence of the learned Advocate for the appellant and in the 2nd case rehearing was allowed as there was error apparant on the face of the record.Keeping these decisions in view their Lordships observed in the case of Sirajul Islam and others.....Vs.....Fazlul Hoque and others reported in 47 DLR at page 480,—

"It is true that this court has inherent jurisdiction to set aside its own judgement to secure ends of justice or to prevent abuse of the process of any court under section 561A of the Code of Criminal Procedure.But we do not find existence of any such circumstances in the instant case to set aside our judgement dated 20.4.1995".

However, under Article 105 of the constitution the Appellate Division of the Supreme Court has the power to review its own judgement or order.

370. Presidency Magistrate's Judgement. Omitted by A.O., 1949, Sch.

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

(2) Omitted by L.R.O. (Ordn. XLIX of 1978).

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

Note

In sub-section (1) the words and figure "Case under Chapter XX" have been substituted for the words "Summons-Case", It shows that copy of judgement of cases tried under chapter XX cannot be given free of cost to the accused.

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

373. Court of Sessions to send copy of finding and sentence to District Magistrate.- In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

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2. By Ordn. XXIV of 1982 : w. e. f. 21 - 8 - 82

CHAPTER XXVII
OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION

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

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

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

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

376. Power of High Court Division to confirm sentence or annul conviction.— In any case submitted under section 374, the High Court Division.-

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person :

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

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

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

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

380. Procedure in cases submitted by Magistrate not empowered to act under section 562. *Rep. by the probation of Offenders Ordinance, 1960 (XLV of 1960), s. 16.*

CHAPTER XXVIII
OF EXECUTION

381. Execution of order passed under section 376.— When a sentence of death passed by a Court of Sessions is submitted to the High Court Division for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court Division thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

382. Postponement of capital sentence on pregnant woman.— If a woman sentenced to death is found to be pregnant, the High Court Division shall order the execution of the sentence to be postponed, and may, if fit thinks fit, commute the sentence to imprisonment for life.

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

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

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

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

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both of the defaulter :

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

(2) The Government may make rules regulating the manner in which warrants under sub-section (1), clause (a), are to be executed,

and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

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

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

387. Effect of such warrant.— A warrant issued under section 386, sub-section (1) clause (a), by any Court may be executed within the local limits of the jurisdiction of such court, and it shall authorise the attachment and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Metropolitan Magistrate within the local limits of whose jurisdiction such property is found.

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

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three installments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as

the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

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

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

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

391. Execution of sentence of whipping, in addition to imprisonment.— (1) When the accused -

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

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

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

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

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

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

393. Not to be executed by instalments, exemptions.— No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping, namely:—

(a) females;

(b) males sentence to death or to transportation, or to imprisonment for more than five years;

(c) males whom the Court considers to be more than forty five years of age.

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

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

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

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

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

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

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

Explanation.— For the purposes of this section -

(a) a sentence of transportation shall be deemed severer than a sentence of imprisonment;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

397. Sentence on offender already sentenced for another offence.— When a person already undergoing a sentence of imprisonment, or transportation, is sentenced to imprisonment, or transportation, such imprisonment, or transportation shall commence at the expiration of the imprisonment, or transportation to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence ;

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

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

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

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

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

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

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

CHAPTER XXIX
OF SUSPENSION, REMISSIONS AND COMMUTATIONS OF SENTENCES

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

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

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

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

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

(5) Nothing herein contained shall be deemed to interfere with the right of the President to grant pardons, reprieves, respites or remissions of punishment.

(5A) Where a conditional pardon is granted by he President any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

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

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

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

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

402A. Sentences of death.— The powers conferred by sections 401 and 402 upon the Government may, in the case of sentences of death, also be exercised by the President.

CHAPTER XXXI
OF PREVIOUS ACQUITTALS OR CONVICTIONS

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

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

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

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

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

Explanation.— The dismissal of a complaint, the stopping of proceedings under section 249, or the discharge of the accused is not an acquittal for the purposes of this section.

Illustrations

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

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

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

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

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

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

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

PART VII
OF APPEAL, REFERENCE AND REVISION

CHAPTER XXXI
OF APPEALS

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

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

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

to the Court of Sessions:

Provided that the Government may, by notification in the official gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the Chief Metropolitan Magistrate or the District Magistrate shall lie to the Chief Metropolitan Magistrate or, as the case may be, to the District Magistrate and not to the Court of Session :

Provided, further, that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123.

406A. Appeal from order refusing to accept or rejecting a surety.— Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,-

(a) if made by the Chief Metropolitan Magistrate or the District Magistrate, to the Court of Sessions;

(b) if made by a Metropolitan Magistrate other than the Chief Metropolitan Magistrate, to the Chief Metropolitan Magistrate: or

(c) if made by any other Magistrate, to the District Magistrate.

407. Appeal from sentence of Magistrate of the second or third class.— (1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by a Sub-divisional Magistrate of the second class, may appeal to [2][the District Magistrate.]

[2][**Transfer of appeals to first class Magistrate.**— (2) The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Additional District Magistrate subordinate to him and empowered by the Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such Additional District Magistrate, or, if already presented to the District Magistrate, may be transferred to such Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.]

Note

The section deals with APPEALS from an ORDER OF CONVICTION passed by any Magistrate of the Second or Third Class.

In sub-section (1) the words "the District Magistrate" has been substituted for the words "Sessions Judge". By this amendment appeal from an order of conviction passed by any Magistrate of the Second or Third class lies with the District Magistrate. Earlier such appeal used lies to with the Sessions Judge. This has been done to minimize the work-load of the Court of Sessions.

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2. By Ordn. XXIV of 1982; w.e.f. 21.8.82.

Under Sub-Section (2) the District Magistrate may direct any Additional District Magistrate of his district to hear such appeals and in such circumstances the appeal may also be presented to such Additional District Magistrates instead of presenting the same with the District Magistrate. But before making such direction the District Magistrates shall have to be sure that the said Additional District Magistrates have been invested with the power by government to hear such appeal.

The District Magistrates, however, reserve the right to withdraw any such appeal from the court of the Additional District Magistrates and may hear it by himself or get it heard and disposed of by some other competent court.

35 DLR 148-Jamshed Ali Vs. Abdus Salam : After the amendment of Section 407 by ordinance No. XXIV of 1982 appellate power as against orders of conviction passed by any Magistrate of the second or third class has been given to the Additional District Magistrates.

[3][408]. **Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.**— Any person convicted on a trial held by an Assistant Sessions Judge, a Metropolitan Magistrate, a District Magistrate, an Additional District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by a Magistrate of the first class, may appeal to the Court of Sessions .

Provided as follows :—

(a) Omitted by L.R.O. (Ordn. XLIX of 1978)

(b) when in any case an Assistant Sessions Judge [***] passes any sentence of imprisonment for a term exceeding five years, or any sentence of transportation, the appeal of all or any of the accused convicted at such trial shall lie to the High Court Division;

(c) when any person is convicted by a Magistrate of an offence under section 124A of the Penal Code the appeal shall lie to the High Court Division.

3.By Ordn. LX of 1982 ; w. e. f. 30 - 12 - 82

**** Sec. 408(b) "or a Magistrate" has been omitted vide Ordn. No. LXX of 1984; w.e.f. 1.12.84.*

Note

This section deals with an Appeal from an ORDER OF CONVICTION passed by any Magistrate of the first class and also by any Assistant Sessions Judge.

By Ordinance No. LX of 1982 the words "Additional Districtg Magistrate" have been added in the Section and this became necessary in view of the power given to the Additional District Magistrates to try cases.

Appeal from an order of conviction passed by any Magistratre of the first class including a Metropolitan Magistate, a District Magistrate and an Additional District Magistrate lies with the Court of Sessions with the single exception that when the order of conviction is passed u/s 124A of the Penal Code "(sedition)" appeal lies with the High Court Division.

Another very significant amendment has been brought in by omitting "or a Magistrate" from clause (b) of the proviso to the section by Ordinance No. LXX of 1984. In view of this amendment appeal lies in the court of Sessions against any order of conviction passed by any Magistrate of the first class irrespective of the term of imprisonment. Earlier appeal used to lie with the High Court Division when the term of imprisonment used to exceed five years.

Appeal from an order of conviction passed by an Assistant Sessions Judge lies with the court of Sessions provided the term of imprisonment does not exceed five years; but if it does exceed, appeal lies with the High Court Division.

41 DLR 395: Appeal will lie to the court of Sessions if the Assistant Sessions Judge deemed to be an Additional Sessions Judge passes a sentence of imprisonment for a term of five years or less.

We also hold that when an Assistant Sessions Judge deemed to have been appointed as an Additional Sessions Judge passes a sentence of imprisonment for a term of five years or less, the appeal will lie to the court of Sessions. Section 408 has full force and application.

409. Appeals to Court of Sessions how heard.— An appeal to the Court of Sessions or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge ;

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

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

411. [Appeal from sentence of Presidency Magistrate] Omitted by A.O., 1949, Sch.

412. No appeal in certain cases when accused pleads guilty.— Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by a Court of Sessions or any Metropolitan Magistrate or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

413. No appeal in petty cases.— Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Sessions passes a sentences of imprisonment not exceeding one month only, or in which a Court of Sessions or District Magistrate or Metropolitan Magistrate or other Magistrate of the first class passes a sentence of fine not exceeding fifty taka only.

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

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

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

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

415A. Special right of appeal in certain cases.— Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.

416. Saving of sentences on European British subjects. Rep. by the Criminal Law Amendment Act. 1923 (XII of 1923,) S. 26.

417. Appeal in case of acquittal.— [5][(1) Subject to the provisions of sub-section (4), the Government may, in any case, direct the Public Prosecutor to present an appeal -

(a) to the High Court Division from an original or appellate order of acquittal passed by any Court of Session,

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

(2) Notwithstanding anything contained in section 418 if such an order of acquittal is passed in any case instituted upon complaint, the complainant may present an appeal to the High Court Division against such acquittal on any ground of appeal which involves a matter of law only.

(3) No appeal by the complainant from an order of acquittal shall be entertained by the High Court Division after the expiry of sixty days from the date of the order of acquittal.

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

Note

This section deals with APPEAL against an ORDER OF ACQUITTAL. Sub-Section (1) deals with Police cases and sub-section (2) deals with complaint cases.

Previously appeal against an order of acquittal passed by any court used to lie with the High Court Division : but now appeal against any original or appellate order of acquittal passed by any Magistrate shall lie with the Court of Sessions, and that of the Court of Sessions to the High Court Division under Sub-Section (1). But, for presentation of such appeal a direction by the Government to the public prosecutor is necessary. So such appeals are dependent upon the decision of the Government which may not be had in all cases. In that circumstances persons feeling aggrieved may prefer revision.

In complaint cases the complainant may himself prefer such appeal to the High Court Division under Sub-Section (2) within 60 days from the date of the order of acquittal. However, in case of appeal under Sub-Section (1) the limitation for presentation of such appeal is six months from the date of the order of acquittal under Article 157 of the Limitation Act.

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5. *By Ordn. XXXVII of 1983 ; w. e. f. 8 - 8 - 83*

It may be mentioned here that Sections 407 and 408 deal with appeal from Orders of conviction.

38 DLR (Ctg) 27 - Authorised officer C. D. A. Vs. The State and others : The limitation Prescribed by Section 417 (3) is 60 days from the date of the order of acquittal for preferring an appeal by the complainant to the High Court Division. Time for presenting appeal being specifically laid down in the section general provision of the Limitation Act will not be applicable in such cases. So, if there is any delay the High Court Division is not competent to condone the same u/s 5 of the Limitation Act.

However, time passed in obtaining the certified copy of the judgement in question, the day of pronouncement of judgement, etc. will be excluded from the period of 60 days as per Section 9 and 12 of the Limitation Act.

36 DLR (Ctg) 111 - Ali Hossain Vs. The State :

From an order of acquittal in a case instituted on complaint, an appeal by the Complaint on a point of law will lie beore the High Court Division, but no revision will lie in such a case to the High Court Division. No revision will similarly lie before a Sessions Judge.

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

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

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

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Appellate Court shall not enhance the sentence except after giving to the accused reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

418. Appeals on what matters admissible.— An appeal may lie on a matter of fact as well as a matter of law.

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

419. Petition of appeal.— Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.

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

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

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

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

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

and, in cases of appeals under or section 417, the Appellate Court shall cause a like notice to be given to the accused.

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

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or sent for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such appellate Court or sent or trial, or (2) after the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but subject to the provisions of section 106, sub-section (3), not so as to enhance the same;

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

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

(d) make any amendment or any consequential or incidental order that may be just or proper.

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

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

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

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

425. Order by High Court Division on appeal to be certified to lower Court.— (1) Whenever a case is decided on appeal by the High Court Division under this Chapter, it shall certify its judgment, or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the Chief Metropolitan Magistrate, or the District Magistrate, the certificate shall be sent through the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate.

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

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

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

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

(2B). Where High Court Division is satisfied that a convicted person has been granted special leave to appeal to the Appellate Division of the Supreme Court against any sentence which it has imposed or maintained, it may if it so thinks fit order that pending the appeal the sentence or order appealed against be suspended, and also, if the said person is in confinement, that he be released on bail.

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

427. Arrest of accused in appeal from acquittal.— When an appeal is presented under section 417 or section 417A, the High Court Division or any other appellate Court, as the case may be, may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

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

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

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken.

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

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

430. Finality of orders on appeal.— Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 , section 417A and Chapter XXXII.

431. Abatement of appeals.— Every appeal under section 417 or section 417A shall finally abate on the death of the accused, and every other appeal under this Chapter except an appeal from a sentence of fine shall finally abate on the death of the appellant.

CHAPTER XXXII
OF REFERENCE AND REVISION

432. and 433. [Reference by Presidency Magistrate to High Court. Disposal of case according to decision of High Court and direction as to costs.] Omitted by A.O., 1949, Schedule.

434. Power to reserve questions arising in original jurisdiction of High Court and procedure when question reserved. Omitted by the Criminal Procedure Amendment Act, 1943 (XXVI of 1943), s. 6.

435. Power to call for records of inferior Courts.— (1) The High Court Division or any Sessions Judge, Chief Metropolitan Magistrate or District Magistrate, or any Sub-divisional Magistrate empowered by the government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.— All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section.

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(3) Repealed by Act XVIII of 1923.

(4) If an application under this section has been made either to the Sessions Judge or to the Chief Metropolitan Magistrate or District Magistrate, no further application shall be entertained by the other of them.

436. Power to order inquiry.— On examining any record under section 435 or otherwise, the High Court Division or the

Sessions Judge may direct the Chief Metropolitan Magistrate or District Magistrate by himself or by any of the Magistrate subordinate to him to make, and the Chief Metropolitan Magistrate or District Magistrate may himself make, or direct and subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any person accused of an offence who has been discharged :

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

437. Omitted by Ordn. XLIX of 1978.

438. Report to High Court Division.— (1)The Sessions Judge, Chief Metropolitan Magistrate or District Magistrate may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court Division the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

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

439. High Court Division's powers of revision.— (1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court Division may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 3*, 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

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

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

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

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

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

439A. Sessions Judge's power of revision.— (1) In the case of any proceeding the record of which has been called for by himself or which otherwise comes to his knowledge, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court Division under section 439.

(2) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final.

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

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

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

441. [Statement by Presidency Magistrate of grounds of his decision to be considered by High Court]. Omitted by A. O., 1949, Schedule.

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

CHAPTER XXXIIA

Time for disposal of Appeal and Revision

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

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

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

Note

Chapter XXXIIA has newly been inserted by Ordinance No. XXIV of 1982 with effect from 21 - 8 - 82 which contains only one Section being section 442A. This section deals with time limit for the disposal of Appeal and Revision. The period of limitation in both the cases of Appeal and Revision is 90 working days to be conuted from the date of service of notice upon the respondants or the parties (originally the period of limitation was 60 days but later, it has been extended to 90 working days by Ordinance No. 37 of 1983).

This provision of time limit in case of the disposal of appeal and revision is DIRECTORY in nature, as, non-compliance of the provision has not been attended with any judical consequence. (For principle the ruling reported in 35 DLR at page 275 may be gone into).

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2. By Ordn. XXIV of 1982 ; w. e. f. 21 - 8 - 82

5. By Ordn. XXXVII of 1983 ; w. e. f. 8 - 8 -83

PART VIII
SPECIAL PROCEEDINGS

[CHAPTER XXXIII. - SPECIAL PROVISIONS RELATING TO CASES IN WHICH EUROPEAN AND PAKISTAN BRITISH SUBJECTS ARE CONCERNED.] - Omitted by the Criminal Law (Extinction of Discriminatory Privilege) Act, 1949 (II of 1950), Schedule.

CHAPTER XXXIV
LUNATICS

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

(1A) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

472. [Lunatic prisoners to be visted by Inspector General]. Rep. by the Lunacy Act, 1912 (IV of 1912), s, 101 and Schedule II.

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

474. Procedure where lunatic detained under section 446 or 471 is declared fit to be released.— (1) If such person is detained under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the Government may thereupon order him to be released or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

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

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

(a) be properly taken care of and prevented from doing injury to himself or to any other person, and

(b) be produced for the inspection of such officer, and at such times and places, as the Government may direct, and

(c) in the case of a person detained under section 466, be produced when required before such Magistrate or Court, order such person to be delivered to such relative or friend.

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

CHAPTER XXXV

PROCEEDING IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

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

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

For the purpose of this sub-section, a Metropolitan Magistrate shall be deemed to be a Magistrate of the first class.

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

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

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

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

477. Power of Court of Sessions as to such ofence committed before itself. Rep. by the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1923), s. 129 section 478 & 479 : Omitted by Ordn. XLIX of 1978.

480. Procedure in certain cases of contempt.— (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred Taka, and in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

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

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

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

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

483. When Registrar or Sub-registrar to be deemed a Civil Court within sections 480 and 482.— When the Government so directs, any Registrar or any Sub-registrar appointed under the Registration Act, 1908 shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

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

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

485A. Summary procedure for punishment for non-attendance by a witness in obedience to summons.— (1) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at the place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried

summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding taka two hundred and fifty.

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

486. Appeals from convictions in contempt cases.— (1) Any person sentenced by any Court under section 480 or section 485 or section 485A may, not withstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

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

(3) [' ' ' Omitted by A . O. 1949,]

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

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

487. Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.— (1) Except as provided in sections 480, 485 and 485A, no Judge of a Criminal Court or Magistrate, other than a Judge of the Supreme Court , shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Omitted by Ordn. XLIX of 1978.