

PART II

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES

CHAPTER II

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES

A. — Classes of Criminal Courts

6. **Classes of Criminal Courts.**— Besides the Supreme Court and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of criminal Courts in Bangladesh, namely :-

I.— Courts of Sessions;

II.— Metropolitan Magistrates;

III.— Magistrates of the first class;

IV.— Magistrates of the second class;

V.— Magistrates of the third class.

B.— Territorial Divisions

7. **Sessions divisions and districts.**— (1) Bangladesh shall consist of sessions divisions: and every sessions division shall, for the purposes of this Code, be a districts or consist of districts.

Power to alter divisions and districts.— (2) The Government may alter the limits or the number of such divisions and districts.

Existing divisions and districts maintained till altered.— (3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are to altered.

(4) A Metropolitan area shall, for the purposes of this Code, be deemed to be a sessions division.

8. **Power to divide districts into sub-divisions.** — (1) The Government may divide any district outside a Metropolitan Area into sub-divisions, or make any portion of any such district a sub-division, and may alter the limits of any sub-division.

Existing Sub-divisions maintained. — (2) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.—Courts and Offices

9. Court of sessions. — (1) The Government shall establish a court of session for every sessions division, and appoint a judge of such court and the court of sessions for a Metropolitan area shall be called the Metropolitan Court of Sessions.

(2) The Government may, by general or special order in the official gazette, direct at what place or places the court of sessions shall hold its sitting; but, until such order is made, the courts of sessions shall hold their sittings as heretofore.

(3) The Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such courts :

²[Provided that where in a district, the District Magistrate, Additional District Magistrate or any Magistrate of the first class is specially empowered under section 29C to try any offence, all Assistant Sessions Judges of the sessions division within which the district is situate shall be deemed to have been appointed as Additional Sessions Judges of that division.]

(4) A Sessions Judge of one sessions division may be appointed by the Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Government may direct.

(5) All courts of Sessions existing when this Code comes into force shall be deemed to have been established under this Act.

Note

Sub-section (3) of section 9 has been amended vide ordinance No. XXIV of 1982 with effect from 21.8.82 by adding a proviso to the effect that in a district where the District Magistrate, Additional District Magistrate or any Magistrate of the first class will be specially empowered under section 29C to try any offence, all Assistant Sessions Judges of the Sessions division within which the district is situated shall be deemed to have been appointed as Additional Sessions Judges of that division. But they will not have the power to award a sentence of death as section 31 limits such power.

Be it noted here that Government have by now invested all the District Magistrate, Additional District Magistrates and Magistrate of the 1st class with powers as envisaged under section 29C vide Govt. Notification No. ED/FA-52/82-466 dt. 8.9.82 and No. ED/EA-28/83-120 dt. 6.3.83.

² Added by Ordin. XXIV of 1982, w.e.f. 21.8.82

By such investment of special powers to the District Magistrates and the Additional District Magistrates, all Assistant Sessions Judges all over the country are now deemed to have been appointed as Additional Sessions Judges (s. 9(3)).

An Assistant Sessions Judge deemed to be appointed as Additional Sessions Judge has the limited power of passing higher sentences except a Death Sentence in those Sessions Cases which are now triable by him by deeming and treating him to be an Additional Sessions Judge consequent upon the changes brought about. He shall not be deemed to be an Additional Sessions Judge for all purposes, e.g. for hearing appeals, revisions, reference and reviews. *Abul Kashem Vs. State* 43 DLR(AD) 77.

Assistant Sessions Judges deemed to have been appointed as Additional Sessions Judges under the proviso to sub-section (3) of Section 9 shall exercise only trial jurisdiction as Additional Sessions Judges and nothing else. Part II of the Criminal Procedure Code does not control or govern Part VII of the Code titled "of Appeal, Reference and Revision". *Nurul Huda Vs. Baharuddin* 41 DLR 395.

Court of sessions is a Court and Sessions Judge is an Office. 41 DLR 395.

In the rulings reported in 36 DLR 93=5 BLD 4(a), 37 DLR 18=5 BLD 316 and 37 DLR 204 it was held that "An Assistant Sessions Judge deemed to have been appointed as Additional Sessions Judge may pass any sentence authorised by law except a sentence of death. It was further held that "deemed Additional Sessions Judges shall have all the powers like those of the Additional Sessions Judges to hear Appeals, Revisions, References and Reviews."

But the Editor of the D.L.R. in his Editorial to August Issue of the DLR Volume 37 and MR. SACHCHA IBNE AHMED in his article published in the March Issue of the 38 DLR could not agree to the decisions quoted above and they were of the opinion that enhanced power of the deemed Additional Sessions Judges must be limited only to the trial of a case and it cannot extend to Appeal, Revision or Reference, for, the power & position of the Assistant Sessions Judges had to be raised in juxtaposition with the raising of power of the Magistrate 1st class to try offences attracting higher punishment (upto ten years) and also to award punishment upto seven years. Assistant Sessions Judges always held higher position than those of the 1st Class Magistrates and the Legislatures with a view to maintain this position brought the amendment by adding the proviso to Section 9(3). However, at the present the matter has been settled by their Lordships in the rulings mentioned above.

10. District Magistrate. — (1) In every district outside a Metropolitan Area the Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The Government may appoint any Magistrate of the first class to be an Additional District Magistrate or Joint District Magistrate and such Additional District Magistrate or Joint District

Magistrate shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the Government may direct.

(3) For the purpose of section 192, sub-section (1), 407, sub-section (2) and 528, sub-section (2) and (3), such Additional District Magistrate or Joint District Magistrate shall be deemed to be subordinate to the District Magistrate.

11. Officers temporarily succeeding to vacancies in office of District Magistrate. — Whenever in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Government exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

12. Subordinate Magistrate.— (1) The Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside a Metropolitan area and the Government or the District Magistrate, subject to the control of the Government may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their jurisdiction. — (2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

13. Power to put Magistrate in charge of Sub-division. — (1) The Government may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrate shall be called sub-divisional Magistrates.

Delegation of powers to District Magistrate.

(3) The Government may delegate its powers under this section to the District Magistrate.

[13A. ⁵[Upazila Magistrate]. — (1) The Government may place Magistrate of the first or second class in a ⁵[Upazila] / ¹⁷[Thana] and such Magistrate shall be called the ⁵[Upazila] Magistrate].

(2) A ⁵[Upazila Magistrate] shall have all the powers of a Sub-divisional Magistrate under this Code.

3. By Ordn. No. LX of 1982; w.e.f. 30.12.82

5. By Ordn. No. XXXVII of 1983; w.e.f. 8-8-83

17. Substituted by Act III of 1994; w.e.f. 18.5.94. for Upazila Magistrate.

Note

By the amendment the most important institution of the Sub-divisional Magistrate has, in fact, been substituted by the Upazila Magistrate and this became necessary with the introduction of Upazila system by abolishing Sub-divisions. But at the present this Upazila system has also been abolished and the Upazilas have been renamed as "Thanas".

But the term "Upazila Magistrate" as the appearing in the Code Criminal Procedure has not been amended. However, a piece of Legislation in the name and style "প্রচলিত আইন ও আইনগত দলিল (অভিযোজন) আইন, ১৯৯৪" (Act III of 1994) has been introduced with effect from 18. 5. 94 where in it has been laid down that the term "Upazila" wherever appearing in any existing law or legal document be deemed to have been substituted by the term "Thana". But is this provision sufficient to convert the institution of "Upazila Magistrate" into one of the "Thana Magistrate"? The answer would be, in my opinion "not", because, the Code of Criminal Procedure shall have to be amended as was amended by Ordinance No. LX of 1982 and XXXVII of 1983 whereby the institution of "Sub-Divisional Magistrate" was first substituted by the term "Thana Magistrate" and thereafter by the term "Upazila Magistrate". It is a fiction that though "Sub-Divisions" and "Upazilas" are no more in existence in this country yet the terms are still there in the Cr. P. C. However, we may read "Thana" for "Upazila" on the basis of the provisions of Act 3 of 1994 but not the "Upazila Magistrate" as "Thana Magistrate" for the reason that it is a compact term representing an institution and as such a portion of the term cannot be changed.

Section 13A is a new insertion in the Code and has been made to facilitate institution of criminal cases in the erstwhile newly created Thanas / Upazilas. But the sitting of the courts in the Thanas are closed and the Magistrates posted there have been taken back to Sadar Now, to make it workable some Notifications have been issued whereby those "Upazila Magistrates" have been named as "Assistant Commissioners" and it has been instructed that out of the Senior Assistant Commissioners some may be assigned the task of taking cognizance of cases and that in that event they (those Senior Assistant Commissioners) be treated as "Thana Magistrates" and be addressed as "Court of Cognizance". But the Notifications and the Circulars cannot be the substitute of law nor can be found having the force of law. Persons in the helm of affairs instead of labouring much on the Notifications should have gone for amendment of the Code itself.

14. Special Magistrates. — (1) The Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area outside a Metropolitan area.

(2) Such Magistrate shall be called Special Magistrates, and shall be appointed for such term as the Government may by general or special order direct.

(3) The government may delegate, with such limitations as it thinks fit, to any officer under its control the powers conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

15. Benches of Magistrates. — (1) The Government may direct any two or more Magistrates in any place outside a Metropolitan Area to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or, such classes of cases only, and within such local limits, as the Government thinks fit.

Powers exerciseable by Bench in absence of special direction. — (2) Powers exerciseable by Bench in absence of special direction.— Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

16. Power to frame rules for guidance of Benches. — The Government may, or, subject to the control of the Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates Benches in any district respecting of the following subjects :-

- (a) the classes of cases to be tried;
- (b) the times and places of sitting;
- (c) the constitution of the Bench for conducting trial;
- (d) the mode of settling differences of opinion which may arise between the Magistrates in session.

17. Subordination of Magistrates and Benches to District Magistrate. — (1) All Magistrates appointed under section 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and benches; and

To Sub-divisional Magistrate. — (2) Every Magistrate (other than a Sub-divisional Magistrate) and every bench exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge. — (3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose court they exercise jurisdiction, and he may, from time to time, make rules consistent with this code as to the distribution of business among such, assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.— Courts of Metropolitan Magistrates

18. Appointment of Metropolitan Magistrates.— In a Metropolitan area, the Government shall, for the purposes of this Code, appoint a Chief Metropolitan Magistrate and such other Metropolitan Magistrates as it may deem fit.

(2) The Government may appoint one or more Additional Chief Metropolitan Magistrates, and such Additional Chief Metropolitan Magistrates shall have all or any of the powers of the Chief Metropolitan Magistrate under this Code or under any other law for the time being in force, as the Government may direct.

(3) The Government may confer upon any person all or any of the powers of a Metropolitan Magistrate under this Code in respect to particular cases or class of cases or in regard to cases generally in a Metropolitan area or in any part thereof.

19. Benches. — Any two or more of Metropolitan Magistrates may, subject to the rules made by the Chief Metropolitan Magistrate, sit together as bench.

20. Local limits of jurisdiction.— Every Metropolitan Magistrate shall exercise jurisdiction in all places within a Metropolitan area for which he is appointed.

21. Chief Metropolitan Magistrate.— (1) The Chief Metropolitan Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him or on a Metropolitan Magistrate under this Code, or under any law for the time being in force and may, from time to time, with the previous sanction of the Government, make rules consistent with this Code to regulate -

(a) the conduct and distribution of business and the practice in the Courts of Metropolitan Magistrate:

(b) the constitution of Benches of Metropolitan Magistrates:

(c) the times and places at which such benches shall sit;

(d) the mode of settling differences of opinion which may arise between Metropolitan Magistrates in session: and

(e) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) For the purpose of this Code, all Metropolitan Magistrate including the Additional Chief Metropolitan Magistrates, and bench of such Magistrates shall be subordinate to the Chief Metropolitan Magistrate; who may, from time to time, make rules or give special orders consistent with this Code, as to the distribution of business among such Magistrates.

E.— Justices of the Peace

22. Justices of the peace for the mafassal.— The Government may, by notification in the official gazette, appoint such persons resident within Bangladesh and not being the subjects of any foreign State as it thinks fit to be Justices of the Peace within and for the local area mentioned in such notification.

23 and 24. Ex-officio Justices of the Peace.— Justices of the peace for the Presidency-towns. Present Justices of the Peace. Rep. by the Criminal Law Amendment Act, 1923 (XII of 1923),

25. Ex-officio Justices of the Peace.— In virtue of their respective offices, the Judges of the Supreme Court are Justices of the Peace within and for of the whole of Bangladesh, Sessions Judges, District Magistrates and Metropolitan Magistrates are Justices of the Peace within their respective jurisdiction.

F.— Suspension and Removal

26 and 27. [Suspension and removal of Judges and Magistrates. Suspension and removal of Justices of the Peace.] Rep. by A.O., 1937.

CHAPTER III POWERS OF COURTS

A.— Description of Offences cognizable by each Court

28. Offences under Penal Code.— Subject to the other provisions of this Code any offence under the Penal Code may be tried -

- (a) by the High Court Division, or
- (b) by the Court of Sessions, or
- (c) by any other court by which such offence is shown in the eighth column of the second schedule to be triable.

Illustration

A is tried by the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

29. Offences under other laws.— (1) Subject to the other provisions of this Code, any offence under any other law shall, when any court is mentioned in this behalf in such law, be tried by such court.

(2) When no court is so mentioned, it may be tried subject as aforesaid by any court constituted under this code by which such offence is shown in the eighth column of the second schedule to be triable.

29A [Trial of European British subjects by second and third class Magistrates] Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (II of 1950).

29B. Jurisdiction in the case of juveniles.— Any offence, other than one punishable with death or Imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of fifteen years, may be tried by a District Magistrate or the Chief Metropolitan Magistrate or by any Magistrate specially empowered by the Government to exercise to powers conferred by or under any law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.

³[29C. Offences not punishable with death.— Notwithstanding anything contained in section 29, the Government may —

(a) invest the ⁴[Chief Metropolitan Magistrate, District Magistrate or any Additional District Magistrate with power to try as a Magistrate all offences not punishable with death;

(b) invest any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with transportation or with imprisonment for a term exceeding ten years.

Note

This section had newly been introduced by Ordinance No. XXIV of 1982, but later on it was substituted as stated above by ordinance No. LX of 1982.

This provision empowers the Government to invest a Chief Metropolitan Magistrate, a District Magistrate or an Additional District Magistrate to try all offences not punishable with death and a Magistrate of the first class to try all offences not punishable with death or with imprisonment for a term exceeding 10 years. But they will not, however, be able to pass sentence awarding imprisonment for a term exceeding 7 years pursuant to the provisions of the newly inserted section 33A.

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

⁴. By Ordn. II of 1983: w.e.f. 25.1.83.

If a Chief Metropolitan Magistrate, a District Magistrate, an Additional District Magistrate or a Magistrate of the first class being specially empowered u/s 29C, on conclusion of a trial, is of the opinion under the evidence on record, that the accused be punished severely for more than seven years' imprisonment, he shall refer the case to the Sessions Judge elucidating his opinion in this regard. However, the Sessions Judge may pass any sentence as he will deem proper under the evidence on record.

Be it noted here that Government have by now invested all the District Magistrates and the Additional District Magistrates with powers as envisaged under the section vide Govt. Notification No. ED/FA-52/82-466 dt. 8.9.82 and No. ED/FA/-28/83-120dt. 6.3.83.

By such investment of powers all Assistant Sessions Judges all over the country are now deemed to have been appointed as Additional Sessions Judges U/S 9(3).

30. Omitted by Law Reform Ord. 1978.

B.—Sentences which may be passed by Courts of various Classes

31. Sentences which High Court Division and Sessions Judges may pass.— (1) The High Court Division may pass any sentence authorised by law.

(2) A Sessions Judge or additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court Division.

(3) An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding ten years or of imprisonment for a term exceeding 2[ten] years.

²[(4) An Assistant Sessions Judge deemed to have been appointed as Additional Sessions Judge under the proviso to sub-section (3) of section 9 may pass any sentence authorised by law except a sentence of death.]

Note

Section 31 deals with the sentence which may be passed by the High Court Division and the Courts of Sessions.

High Court Division can pass any sentence authorised by law.

A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law. But a sentence of death requires confirmation by the High Court Division.

The amendment has enhanced the power of awarding sentence of imprisonment by an Assistant Sessions Judge upto ten years; earlier it was seven years.

When an Assistant Sessions Judge is deemed to have been appointed as an Additional Sessions Judge under the proviso to Sub-section (3) of Section 9 he may pass any sentence authorised by law except a sentence of death.

Be it noted here that Government have by now invested all the District Magistrates, Additional District Magistrates and Magistrates of the 1st class with powers as envisaged under section 29C, vide Govt. Notification No. ED/FA-52/82-466 dt. 8-9-82 and No. ED/FA-28/83-120 dt. 6-3-83.

By such investment of Special powers to the District Magistrates and Additional District Magistrates all Assistant Session Judges all over the country are now deemed to have been appointed Additional Sessions Judge u/s 9(3).

This provision came under serious criticism. And the rulings reported in 36 DLR 93=5 BLD 41(a) and also in 37 DLR 18=5 BLD 316 and 37 DLR 24 were also not acceptable to many and as a result there came out the Editorial on the subject differing with the rulings in August Issue of 37 DLR and MR. SACHCHA IBNE AHMED also wrote article which was published in March Issue of 38 DLR. These academic debate ultimately led a Full Bench of the Hon'ble High Court Division to settle the matter which resolved and enunciated the principle in the case of Nurul Huda..... Vs..... Bahar uddin reported in 41 DLR at page 395 wherein it is held that Assistant Sessions Judge deemed to have been appointed as Additional Sessions Judge does not acquire the status of an Additional Sessions Judge for all purposes of the Code other than trial jurisdiction. The deemed Additional Sessions Judges cannot hear Appeal, Revision, Reference or Review. Thereafter came the decision of the Appellate Division reported in 43 DLR (AD) 77. So, now the decision reported in 36 DLR 93, 37 DLR 18, 37 DLR 24, 5 BLD 41(a) and 5 BLD 316 are overruled.

32. Sentences which Magistrates may pass.— (1) The Courts of Magistrates may pass the following sentences namely :-

- (a) Courts of Metropolitan Magistrates and of Magistrates of the first class: Imprisonment for a term not exceeding ²[five years], including such solitary confinement as is authorized by law:
Five not exceeding ²[ten thousand taka];
Whipping.
- (b) Courts of Magistrates of the second class: Imprisonment for a term not exceeding ²[three years], including such solitary confinement as is authorized by law;
Fine not exceeding ²[five thousand taka];
Imprisonment for a term not exceeding ³[two years];
- (c) Courts of Magistrates of the third class: Fine not exceeding ²[two thousand];
(2) the Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

Note

Section 32 has been amended by enhancing the powers of the Magistrates as follows :-

Magistrate	Previous Powers	Present Powers
First Class	3 years imprisonment and a fine of Tk. 5,000/-	5 years imprisonment and a fine of Tk. 10,000/-
Second Class	2 years imprisonment and a fine of Tk. 2,000/-	3 years imprisonment and a fine of Tk. 5,000/-
Third Class	1 year imprisonment and a fine of Tk. 1,000/-	2 years imprisonment and a fine of Tk. 2,000/-

33. Power of Magistrates to sentence to imprisonment in default of fine, proviso as to certain cases.— (1) The court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorised by law in case of such default;

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

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

Provided that —

(a) the term is not in excess of the Magistrate's powers under this Code;

(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

[33A. Higher Powers of certain Magistrates.— The Court of a Magistrate, specially empowered under section 29C, may pass any sentence, authorised by law, except a sentence of death or of transportation or imprisonment for a term exceeding seven years.]

Note

Section 33A is a new insertion. It limits the extent of sentence of imprisonment to 7 years which a Magistrate (including the Chief Metropolitan Magistrate, District Magistrate and Additional District Magistrate) can pass though he may be invested with special powers to try offences attracting higher punishment as laid down in section 29C.

34. Omitted by Ordinance XLIX of 1978.

34A. [Sentences which Courts and Magistrates may pass upon European British subjects.] Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (II of 1950), Sch.

35. Sentence in cases of conviction of several offences at one trial.— (1) When a person is convicted at one trial of two or more offences, the court may, subject to the provisions of section 71 of the Penal Code sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to inflict; such punishments, when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher court :

Provided as follows :-

(a) Maximum term of punishment in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) if the case is tried by a Magistrate the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, the aggregate of consecutive sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

¹⁴[35A. **Term of imprisonment in cases where convicts are in custody.**— Where a person is in custody at the time of his conviction and the offence for which he is convicted is not punishable with death or imprisonment for life, the Court may, in passing the sentence of imprisonment, take into consideration the continuous period of his custody immediately preceding his conviction.]

Note

This Section is a new insertion in the Code which relates to the figuring of the term of the sentence while convicting an accused. It directs the courts to consider the continuous period passed by an accused in custody immediately before his conviction at the time of deciding the term of the sentence. However, this concession will not be available in case of offences punishable with death or with imprisonment for life. So, for consideration of the hazard-period in figuring the sentence the following matters are to be taken note of :-

(a) The period in custody must have to be immediately preceding the passing of the order of conviction;

(b) An accused who would be on bail at the time of trial and passing of the sentence will not get the benefit of this section;

(c) Time passed in custody with gap earlier to the passing of the conviction order will not be considered;

(d) This concession will not be available to an accused standing trial of an offence punishable with death or imprisonment for life; and

(e) The nature of concession has been left to the discretion of the Court.

C.— Ordinary and Additional powers

36. Ordinary powers of Magistrates.— All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers".

37. Additional powers conferrable on Magistrates.— In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Government or the District Magistrate.

38. Control of District Magistrates investing power.— The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Government.

D.— Conferment, Continuance and Cancellation of powers

39. Mode of conferring powers.— (1) In conferring powers under this Code the Government may by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

40. Powers of officers appointed.— Whenever any person holding an office in the service of Government who has been instead with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area he shall, unless the Government otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

41. Powers may be cancelled.— (1) The Government may withdraw all or any of the power conferred under this Code on any person by it or by any officer subordinate to it.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

PART III GENERAL PROVISIONS

CHAPTER IV OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS

42. Public when to assist Magistrates and police. — Every person is bound to assist a Magistrate or police officer reasonably demanding his aid,

(a) in the taking or preventing the escape of any other person whom such Magistrate or police-officer is authorised to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

43. Aid to person, other than police officer executing warrant.— When a warrant is directed to a person other than a police officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

44. Public give information of certain offences.— (1) Every person aware of the commission of, or of the intention of any other person to commit any offence punishable under any of the following sections of the Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purposes of this section the term "offence" includes any act committed at any place out of Bangladesh which would constitute an offence if committed in Bangladesh.

45. Village headmen- accountants, landholders, and others bound to report certain matters.— (1) Every village headman, village-accountant, village watchmen, village police officer, owner or occupier of land, and the agent of any such owner or occupier in charge of the management of that land, and every officer

employed in the collection of revenue or rent of land on the part of the Government or the court of wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station whichever is the nearer, any information which he may possess respecting -

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender;

(c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, 144, 145, 147, or 148 of the Penal Code ;

(d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances; or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person;

(e) the commission of, or intention to commit, at any place or of Bangladesh near such village any act which, if committed in Bangladesh, would be an offence punishable under any of the following sections of the Penal Code namely, 231, 232, 233, 234, 235, 236, 237, 238, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 402, 435, 436, 449, 450, 457, 458, 459, 460, 489A, 489B, 489C and 489D:

(f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Government, has directed him to communicate information.

(2) In this section -

(i) "village" includes village lands; and

(ii) the expression "proclaimed offender" includes any person proclaimed as an offender by the court or authority established or

continued by the Government in any part of Bangladesh, in respect of any act which if committed in Bangladesh, would be punishable under any of the following sections of the Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Appointment of village headman by District Magistrate or Sub-divisional Magistrate in certain cases for purposes of this section.— (3) Subject to rules in this behalf to be made by the Government, the District Magistrate or Sub-divisional Magistrate may from time to time appoint one or more persons with his or their consent to perform the duties of a village-headman under this section whether a village-headman has or has not been appointed for that village under any other law.

CHAPTER —V

OF ARREST, ESCAPE AND RETAKING

A.— Arrest generally

46. Arrest how made. — (1) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest.— (2) If such person forcibly resists the endeavor to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

47. Search of place entered by person sought to be arrested.— If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

48. Procedure where ingress not obtainable.— If ingress to such place cannot be obtained under section 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who,

Breaking
open
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according to custom, does not appear in public such person or police officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

49. Power to break open doors and windows for purposes of liberation.— Any police-officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

50. No unnecessary restraint.— The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

51. Search of arrested persons.— Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

Whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail.

The officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

52. Mode of searching women.— Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

53. Power to seize offensive weapons.— The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

B.— Arrested without Warrant.

54. When police may arrest without warrant.— (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest -

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Government;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly, any person who obstructs a police officer while in the execution of his duty or who has escaped, or attempts to escape, from lawful custody;

sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh;

seventhly, any person who has been concerned in, or against whom, a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh.

eightly, any released convict committing a breach of any rule made under section 565, sub-section, sub-section (3);

ninthly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

55. Arrest of vagabonds, habitual robbers, etc.— (1) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested -

(a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(c) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

56. Procedure when police officer deposes subordinate to arrest without warrant.— (1) When any officer-in-charge of a police-station or any police officer making an investigation under Chapter XIV requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order;

57. Refusal to give name and residence.— (1) When any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a

name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required :

Provided that, if such person is not resident in Bangladesh, the bond shall be secured by a surety or sureties resident in Bangladesh.

(3) Should the true name and residence of such person not be ascertained within twenty four hours from the time of arrest or should he fail to execute the bond, or if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

58. Pursuit of offenders into other jurisdiction.— A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest under this Chapter, pursue such person into any place in Bangladesh.

59. Arrest by private persons and procedure on such arrest.— (1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police officer, or, in the absence of a police-officer take such person or cause him to be taken in custody to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

60. Person arrested to be taken before Magistrate or officer in-charge-of police station.— A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer- in- charge of a police-station.

61. Person arrested not to be detained more than twenty four hours.— No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

62. Police to report apprehensions.— Officers-in-charge of police -stations shall report in a Metropolitan Area, to the Chief Metropolitan Magistrate, and in other areas, to the District Magistrate or if the District Magistrate so directs, to the Sub-divisional Magistrate, the cases of all person arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

63. Discharge of person apprehended.— No person who has been arrested by a police officer shall be discharge except on his own bond, or on bail, or under the special order of a Magistrate.

64. Offence committed in Magistrate's presence.— When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail commit the offender to custody.

65. Arrest by or in presence of Magistrate.— Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

66. Power, on escape, to pursue and retake.— If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in Bangladesh.

67. Provisions of sections 47, 48 and 49 to apply to arrests under section 66.— The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

CHAPTER VI

OF PROCESSES TO COMPEL APPEARANCE

A.— Summons

68. Form of summons.— (1) Every summons issued by a court under this Code shall be in writing in duplicate, signed and sealed by the presiding officer of such court, or by such other officer as the Supreme Court may, from time to time, by rule, direct.

69. Summons by whom served.— Such summons shall be served by a police-officer or subject to such rules as the Government may prescribe in this behalf, by an officer of the court issuing it or other public servant.

70. Summons how served.— (1) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Singnature of receipt for summons.— (2) Every person on whom a summons is so served shall if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in Bangladesh. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

71. Service when person summoned cannot be found.— Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

72. Procedure when service cannot be effected as before provided.— If service in the manner mentioned in sections 69 and 70 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

72. Service on servant of Republic.— (1) Where the person summoned is in the active service of the Republic, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

73. Service of summons outside local limits.— When a court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

74. Proof of service in such cases and when serving officer not present.— (1) When a summons issued by a court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered, or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in sub-section (1) may be attached to the duplicate of the summons and returned to the court.

B.— Warrant of Arrest

75. Form of warrant of arrest.— (1) Every warrant of arrest issued by a court under this Code shall be in writing, signed by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the court.

Continuance of warrant of arrest.— (2) Every such warrant shall remain in force until it is cancelled by the court which issued it, or until it is executed.

76. Court may direct security to be taken.— (1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state -

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; and

(c) the time at which he is to attend before the court.

Recognizance to be forwarded.— (3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the Court.

77. Warrants to whom directed.— (1) A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Metropolitan Magistrate, shall always be so directed; but any other court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

(2) **Warrants to several persons.**— When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

78. Warrant may be directed to land-holders, etc.— (1) A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, his land or farm, or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

79. Warrant directed to police-officer.— A warrant directed to any police-officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

80. Notification of substance of warrant.— The police-officer or other executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so require, shall show him the warrant.

81. Persons arrested to be brought before Court without delay.— The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person.

82. Where warrant may be executed.— A warrant of arrest may be executed at any place in Bangladesh.

83. Warrant forwarded for execution outside jurisdiction.— (1) When a warrant is to be executed outside the local limits of the jurisdiction of the court issuing the same, such court may, instead of directing such warrant to a police officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police or, the Police Commissioner in a Metropolitan Area within the local limits of whose jurisdiction it is to be executed.

(2) The Magistrate or District Superintendent or Police Commissioner to whom such warrant is so forwarded shall endorse his name thereon and, if practicable, cause it to be executed in manner herein before provided within the local limits of his jurisdiction.

84. Warrant directed to police-officer for execution outside jurisdiction.— (1) When a warrant directed to a police officer is to be executed beyond the local limits of the jurisdiction of the court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within the local limits of whose jurisdiction the warrant is to be executed, will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the court which issued it.

85. Procedure on arrest of person against whom warrant issued.— When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police or, the Police Commissioner in a Metropolitan area within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Police Commissioner or District Superintendent.

86. Procedure by Magistrate before whom person arrested is brought.— (1) Such Magistrate or District Superintendent or Police Commissioner shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his removal in custody to such court :

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Police Commissioner or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Police Commissioner shall take such bail or security, as the case may be, and forward the bond to the court which issued the warrant.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 76.

C.— Proclamation and Attachment

87. Proclamation for person absconding.— (1) If any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows :-

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the court house.

(3) A statement in writing by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

88. Attachment of property of person absconding.—(1) The court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both, belong to the proclaimed person.

(2) Such order shall authorise the attachment of any property belong to such person within the district in which it is made; and it shall authorise the attachment of any property belong to such person without such district when endorsed by the District Magistrate or Chief Metropolitan Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the Government, be made through the Collector of the district in which the land is situate, and in all other cases -

(e) by taking possession; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the court thinks fit.

(5) If the property ordered to be attached consists of livestock or is of a perishable nature, the court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Order XL of the First Schedule to the Code of Civil Procedure, 1908.

(6A) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(6B) Claims or objections under sub-section (6A) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate or Chief Metropolitan Magistrate in accordance with the provisions of sub-section (2), in the court of such Magistrate.

(6C) Every such claim or objection shall be inquired into by the court in which it is preferred or made :

Provided that, if it is preferred or made in the court of a District Magistrate or Chief Metropolitan Magistrate such Magistrate may make it over for disposal to any Magistrate of the first or second class or to any Metropolitan Magistrate, as the case may be subordinate to him.

(6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

(6E) If the proclaimed person appears within the time specified in the proclamation, the court shall make an order releasing the property from the attachment.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Government but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under sub-section (6A) has been disposed of under that sub-section, unless it is subject to speedy and natural decay, or the court considers that the sale would be for the benefit of the owner, in either of which cases the court may cause it to be sold whenever it thinks fit.

89. Restoration of attached property.— If within two years from the date of the attachment any person whose property is or has been at the disposal of the Government under sub-section (7) of section 88, appears voluntarily or is apprehended and brought before the court by whose order the property was attached, or the court to which such court is subordinate, and proves to the satisfaction of such court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the proeprty, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.— Other Rules regarding Processes

90. Issue of warrant in lieu of, or in addition to summons.— A Court may, in any case in which t is empowered by this code to issue a summons for the appearance of any person issue, after recording its reasons in writing, a warrant for his arrest -

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

91. Power to take bond for appearance.— When any person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such court.

92. Arrest by breach of bond for appearance.— When any person who is bound by any bond taken under this Code to appear before a Court, does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

93. Provisions of this Chapter generally.— The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

applicable to summons and warrants of arrest.

E.— Special Rules regarding processes issued for service or execution outside Bangladesh and processes received from outside Bangladesh for service or execution within Bangladesh.

93A. Sending of summons for service outside Bangladesh.— (1) Where a Court in Bangladesh desires that a summons issued by it to an accused person shall be served at any place outside Bangladesh within the local limits of the jurisdiction of a court established or continued by the authority of the Government in exercise of its foreign jurisdiction, it shall send such summons, in duplicate, by post or otherwise, to the presiding officer of that court to be served.

(2) The provisions of section 74 shall apply in the case of a summons sent for service under this section as if the presiding officer of the court to whom it was sent were a Magistrate in Bangladesh.

93B. Sending of warrants for execution outside Bangladesh.— Notwithstanding anything contained in section 82, where a court in Bangladesh desires that a warrant issued by it for the arrest of an accused person shall be executed at any place outside Bangladesh within the local limits of the jurisdiction of a court established or continued by the authority of the Government in exercise of its foreign jurisdiction, it may send such warrant, by post or otherwise, to the presiding officer of that court to be executed.

93C. Service and execution in Bangladesh of processes received from outside Bangladesh.— (1) Where a court has received for service or execution a summons to, or a warrant for the arrest of, an accused person issued by a court established or continued by the authority of the Government in exercise of its foreign jurisdiction, outside Bangladesh, it shall cause the same to be served or executed as if it were a summons or warrant received by it from a court in Bangladesh for service or execution within the local limits of its jurisdiction.

(2) Where any warrant of arrest has been so executed the person arrested shall so far as possible be dealt with in accordance with the procedure prescribed by sections 85 and 86.

CHAPTER VII

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED

A.— Summons to produce

94. Summons to produce document or other thing.— (1) Whenever any court, or any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial of other proceeding under this Code by or before such court or officer, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order;

Provided that no such officer shall issue any such order requiring the production of any document or other thing which is in the custody of a bank or banker as defined in the Bankers Books Evidence Act, 1891 (XVIII of 1891), and relates, or might disclose any information which relates, to the bank account of any person except,-

(a) for the purpose of investigating an offence under sections 403, 406, 408 and 409 and sections 421 to 424 (both inclusive) and section 465 to 477A (both inclusive) of the Penal Code with the prior permission in writing of a Sessions Judge; and

(b) in other cases, with the prior permission in writing of the High Court Division.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

95. Procedure as to letters and telegrams.— (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Metropolitan Magistrate [High Court Division] or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, Police Commissioner or District Superintendent of Police, wanted for any such purpose, he may require the postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, Chief Metropolitan Magistrate or court.

B.— Search-warrants

96. When search warrant may be issued.— (1) Where any court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, subsection (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,

or where such document or thing is not known to the court to be in the possession of any person,

or where the court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorise any Magistrate other than a District Magistrate or Chief Metropolitan Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

97. Power to restrict warrant.— The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

98. Search of house suspected to contain stolen property, forged documents, etc.— (1) If a District Magistrate, Sub-divisional Magistrate, Metropolitan Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instrument or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

or, if a District Magistrate, Sub-divisional Magistrate or a Metropolitan Magistrate, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in section 292 of the Penal Code or that any such obscene objects are kept or deposited in any place; he may by his warrant authorise any police officer above the rank of a constable -

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials or of any such obscene objects as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments or materials or such obscene objects before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials or such obscene objects knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported or exported.

(2) The provisions of this section with respect to -

(a) counterfeit coin,

(b) coin suspected to be counterfeit, and

(c) instruments or materials for counterfeiting coin, shall, so far as they can be made applicable, apply respectively to -

(a) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into Bangladesh in contravention of any notification for the time being in force under section 16 of the Customs Act, 1969,

(b) pieces of metal suspected to have been so made or to have been so brought in Bangladesh or to be intended to be issued in contravention of the former of those Acts, and

(c) instruments or materials for making pieces of metal in contravention of that Act.

99. Disposal of things found in search beyond jurisdiction.— When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which

issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

14[99A. Power to declare certain publications forfeited and to issue search warrants for the same.— (1) Where any newspaper or book or any document, wherever printed, appears to the Government to contain —

(a) any matter the publication of which is punishable under section 123A or section 124A or section 153A or section 292 or section 295A or section 505 or section 505A of the Penal Code (Act XLV of 1860), or

(b) any matter which is defamatory of the President of Bangladesh, the Vice-President of Bangladesh, the Prime Minister of the Government, the Speaker of Parliament or the Chief Justice of Bangladesh, or

(c) any matter which is grossly indecent or is scurrilous or obscene, or

(d) any words or visible representations which incite, or which are likely to incite, any person or class of persons to commit any cognizable offence.

Government may, by notification in the official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, words or visible representations, and every copy of such book or other document to be forfeited to Government, and thereupon any police-officer may seize the same wherever found in Bangladesh and any Magistrate may by warrant authorise any police-officer not below the rank of Sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1), "newspaper", "book" and "document" have the same meaning as in the Printing Presses and Publications (Declaration and Registration) Act, 1973 (XXIII of 1973).]

Note

The definition of "Newspaper", "Book" and "document" as are given in the Printing Press and Publications (Declaration and Registration) Act, 1973 are quoted below for ready reference : —

(i) "**Newspaper**": "Newspaper" means any periodical work containing public news or comments on public news and includes such other class of periodical works as the Government may, by notification in the Official Gazette, declare to be newspapers.

(ii) "**Book**": "Book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed.

(iii) "**Document**": "Document" includes any painting, drawing, photograph or other visible representation.

48 D. L. R. 39 - Sadaruddin Ahmed Chisty Vs. Government of Bangladesh and others. Forfeiture of a book is a preventive provision so that the author or the publisher of the book does not continue to commit the offence and the remedy against the forfeiture having been provided under section 99B of the Code. the Government was not required to issue any notice before passing the impugned order.

99B. Application to High Court Division to set aside order of forfeiture :-Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99A, may, within two months from the date of such order, apply to the High Court Division to set aside such order on the ground that the issue of the newspaper, or the book or other document in respect of which the order was made, did not contain ¹⁴[any such matter, word or visible representation] as is referred to in sub-section (1) of section 99A.

99C. Hearing by Special Bench.— Every such application shall be heard and determined by a Special Bench of the High Court Division composed of three Judges.

99D. Order of Special Bench setting aside forfeiture.— (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained ¹⁴[any such matter, word or visible representation] as is referred to in sub-section (1) of section 99A, set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench the decision shall be in accordance with the opinion of the majority of those Judges.

99E. Evidence to prove nature of tendency of newspapers.— On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made.

99F. Procedure in High Court Division.— The Supreme Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

99G. Jurisdiction barred.— No order passed or action taken under section 99A shall be called in question in any court otherwise than in accordance with the provisions of section 99B.

C- Discovery of Persons wrongfully confined.

100. Search for persons wrongfully confined.— If any Metropolitan Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

D.— General Provisions relating to Searches

101. Direction etc, of search-warrants.— The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply, to all search warrants issued under section 96, section 98, section 99A or section 100.

102. Persons in charge of closed place to allow search.— (1) Whenever any place liable to search or inspection under this

Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.

103. Search to be made in presence of witnesses.— (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the court as a witness of the search unless specially summoned by it.

(3) **Occupant of place searched may attend.**— The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

(5) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Penal Code.

E.—Miscellaneous

104. Power to impound document, etc. produced.— Any court may, if it thinks fit, impound any document or thing produced before it under this Code.

105. Magistrate may direct search in his presence.— Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

PART IV
PREVENTION OF OFFENCES**CHAPTER VIII****OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.***A.—Security for keeping the Peace on Conviction*

106. Security for keeping the peace on conviction.—¹ (1) Whenever any person accused of any offence punishable under Chapter VIII of the Penal Code, other than an offence punishable under section 143, section 149, section 153A or section 154 thereof, or of assault or other offence involving a breach of the peace, or of abetting the same, or any person accused of committing criminal intimidation, is convicted of such offence before High Court Division, a Court of Sessions or the Court of a Metropolitan Magistrate a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

and such court is opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court including a Court hearing appeals under section 407 or by the High Court Division when exercising its powers of revision.

B.— Security for keeping the Peace in other Cases and security for Good Behaviour.

107. Security for keeping the peace in other cases.— (1) Whenever a Metropolitan Magistrate District Magistrate, Sub-divisional Magistrate or Magistrate of the first Class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate if in his opinion there is sufficient ground for proceeding may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than the Chief Metropolitan or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

(3) **Procedure of Magistrate not empowered to act under sub-section (1).—** When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under sub-section (3) may in his discretion detain such person in custody pending further action by himself under this Chapter

Note

Considering the importance of the section some ruling are cited below for guidance:

26 DLR 373. Badal Chandra Ghose Vs. Mujibur Rahman (1974):

Complainant (in respect of a proceeding u/s 107 Cr. P. Code being found absent on call, Magistrate passed an order of discharge u/s 119. Immediately thereafter the complainant appeared and filed an application for revival of the case on that the Magistrate revived the case.

Held: There was law no discharge and the proceedings u/s 107 to be treated as alive-there was no question of revival in the case

30 DLR 164-Maram Ali Vs. The state and others:

Where there is a dispute relating to possession of immovable properties, the proper procedure is to take action under section 145 Cr. P.C. and to decide the dispute as to possession once for all so far as the criminal-courts are concerned.

34 DLR 352 (AD)- Sultan Ahmed Vs. Haji Sultan Ahmed:- Proceedings under section 145 and 107 of the Code are quite different and independent of each other. But in the course of proceeding under Sec. 145 the Magistrate is quite competent to proceed under sec. 107 if he is satisfied that any party to the proceeding under sec. 145 is likely to commit breach of the peace.

Show cause notice as provided in sub-section (1) of sec. 107 mandatory which cannot be dispensed with.

In the case of imminent breach of peace Magistrate, as provided in sec. 114, may issue warrant for arrest of a person. In matters arising out of sec. 107 even in case of emergency, provision of sec. 112 must be complied with and as provided in sec. 117, Magistrate shall ascertain whether execution of bond is necessary. In case of emergency further provision has been made for execution of interim bond. (Ref. 2BLD 156).

13 DLR 690- Rejendra Mohan Das Vs. Serajul Huq :- Under the provisions of section 117 (1) of the Cr. P.C. a Magistrate is bound to enquire into the truth of an information upon which action has taken. It is not open to the Magistrate to dispense with the enquiry and pass an order merely on perusal of papers and on his assumption from something imaginary that there is no apprehension of breach of the peace. The section provides that the Magistrate should have held a full judicial enquiry as soon as the opposite parties appeared and showed cause against the preliminary order passed under section 107 Cr. P.C. The Magistrate

should direct both the parties to adduce evidence and should record the evidence. If the parties adduce evidence and if they do not adduce any evidence, he should decide the proceedings on the materials before him and pass his final order.

13 DLR 243- Balaram Sarkar Vs. Baba Kanta Sarker :- Proceeding under section 107 need not be drawn afresh on transfer of the case. The failure of the Magistrate to inform the accused of the substance of accusation against them is an illegality which cannot be cured under the provision of section 537 Cr. P.C.

14 DLR 188 SC-Golam Kader Vs. Fazal Din :- Complaint lodged u/s 107 of the Code even if false and frivolous does not justify initiation of proceeding under section 250.

108. Security for good behaviour from persons disseminating seditious matter.— Whenever the Chief Metropolitan or District Magistrate, or a Metropolitan Magistrate or Magistrate of the first class specially empowered by the Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing or in any other manner intentionally disseminates or attempts to disseminate, or in anywise abets the dissemination of,-

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 123A or section 124A of the Penal Code, or

(b) any matter the publication of which is punishable under section 153A of the Penal Code, or

(c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Penal Code, such Magistrate, if in his opinion there is sufficient ground for proceeding may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the Provisions of the Printing Presses and Publications (Declaration and Registration) Act, 1973 with reference to any matters contained in such publication except by the order or under the authority of the Government or some officer empowered by the Government in this behalf.

109. Security for good behaviour from vagrants and suspected persons.— Whenever a Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receive information -

(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

(b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

110. Security for good behaviour from habitual offenders.— Whenever a Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Government receives information that any person within the local limits of his jurisdiction -

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves or aids, in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating, or mischief, or any offence punishable under Chapter XII of the Penal Code or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or

(f) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

111. [*Proviso as to European vagrants*] *Rep. by the Criminal Law Amendment Act, 1923 (XII of 1923), s. 8.*

112. **Order to be made.**— When a Magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, for which it is to be in force, and the number, character and the sureties (if any) required.

113. **Procedure in respect of person present in court.**— If the person in respect of whom such order is present in Court, it shall be read over to him or, if he desires, the substance thereof shall be explained to him.

114. **Summons or warrant in case of person not so present.**— If such person is not present in court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the court ;

Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

115. **Copy of order under section 112 to accompany summons or warrant.**— Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

116. **Power to dispense with personal attendance.**— The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pelader.

117. **Inquiry as to truth of information.**— (1) When an order under section 112 has been read or explained under section 113 to a person present in court, or when any person appears or is brought

before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and where the order requires security for good behaviour in the manner hereinafter prescribed for conducting trials and recording evidence in warrant cases, except that no charge need be framed.

(3) Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded :

Provided that :-

(a) no person against whom proceedings are not being taken under section 108, shall be directed to execute a bond for maintaining good behaviour, and

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 112.

(4) For the purposes of this section the fact that person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community] may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

118. Order to give security.— (1) If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining

good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties the Magistrate shall make an order accordingly :

Provided—

first, that no person shall be ordered to give security of a nature different from or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive :

thirdly, that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

119. Discharge of person informed against.— If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

C. Proceedings in all Cases subsequent to Order to furnish Security.

120. Commencement of period for which security is required.— (1) If any person, in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

121. Contents of bond.— The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the later case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

122. Power to reject sureties.— (1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond :

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing :

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

123. Imprisonment in default of security.— (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(2) **Proceedings when to be laid before High Court Division or Court of Sessions.**— When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Judge.

(3) The Sessions Judge, after examining such proceedings and requiring from the Magistrate any further information or evidence which he thinks necessary, may pass such order on the case as he thinks fit :

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(3A) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(3B) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(5) Kind of imprisonment.— Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108 be simple and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.

124. Power to release persons imprisoned for failing to give security.— (1) Whenever the District Magistrate or the Chief Metropolitan Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the Chief Metropolitan or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts :

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) The Government may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Metropolitan Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the District Magistrate or Chief Metropolitan Magistrate.

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate or Chief Metropolitan Magistrate may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the court or Magistrate by whom such order was made, or to its or his successor.

125. Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.— The Chief Metropolitan or District Magistrate may at any time, for sufficient reasons to be

recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any court in his district not superior to his court.

126. Discharge of sureties.— (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

126A. Security for unexpired period of bond.— When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of section 122 or under section 126, sub-section (2), appears or is brought before him, the Magistrate shall cancel the bond executed by such person] and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX

UNLAWFUL ASSEMBLIES

127. Assembly to disperse on command of Magistrate or police-officer.— (1) Any Magistrate or officer in charge of a police station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

128. Use of civil force to disperse.— If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police station may proceed to disperse such assembly

by force, and may require the assistance of any male person, not being an officer soldier, sailor or airman in the armed forces or Bangladesh for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

129. Use of military force.— If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present or the Police Commissioner in a Metropolitan area may cause it to be dispersed by military force.

130. Duty of officer commanding troops required by Magistrate to disperse assembly.— (1) When a Magistrate or the Police Commissioner determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in the Bangladesh Army to disperse such assembly by military force, and to arrest and confine such person forming part of it as the Magistrate or the Police Commissioner may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

131. Power of commissioned military officers to disperse assembly.— When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of the Bangladesh army may disperse such assembly by military force, and may arrest and confine any person forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

132. Protection against prosecution for acts done under this Chapter.— No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Government ; and -

(a) no Magistrate or police officer acting under this Chapter in good faith,

(b) no officer acting under section 131 in good faith,

(c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and

(d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence :

Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier in the Bangladesh Army except with the sanction of the Government.

CHAPTER X PUBLIC NUISANCES

132A. Application.— The provisions of this Chapter shall not apply to a Metropolitan Area.

133. Conditional order for removal of nuisance.— (1) Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons

living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owing, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure; or

to remove or support such tree; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order ;

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this Section shall be called in question in any civil Court.

Explanation.— A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Note

Considering the importance of the section some rulings are cited below for guidance:

21 DLR 31- S.R. Mahmud Vs. Jahangir :- Carrying of a lawful trade may cause public nuisance. A noise made in the carrying on of a lawful trade under a licence, if injurious to the physical comfort of the community is a public nuisance and a Magistrate has jurisdiction to proceed under section 133 Cr. P.C. for the abatement of the nuisance. (Ref: 8 DLR 298).

2 DLR 67 WP- Mst. Sakina Vs. Habibur Rahman :- Obstruction must be on "public way" or "public place." Dispute relating to ownership of private path-section 133 is not attracted.

17 DLR 317-Md. Afzaluddin Vs. Dwijendra Nath Das :- In a proceeding under section 133 Cr. P.C. Magistrate is bound to record evidence when the existence of a public path is denied.

14 DLR 741- Bazal Ahmed Sowdagar Vs. Nur Md. Sowdagar : A Magistrate cannot drop a proceeding under section 133 merely on local inspection without taking any evidence. A local inspection under section 539B of the Code is only permitted for proper appreciation of evidence.

7 DLR 35- Haji Karamat Ali Pandit Vs. Sadat Ali :- A Magistrate who drew up proceedings under section 133 is competent to transfer the case to another Magistrate under section 192(1) of the Code.

8 DLR 233 - Nezamuddin Vs. Akbar Ali Sheikh :- Under section 133 it is for the Magistrate before whom an information is lodged to consider if any obstruction is to be removed from a public path way.

Where the Magistrate, on the materials before him, did not think fit to proceed under section 133 Cr. P. Code, it was not open to the Sessions Judges to say that the Magistrate on the consideration of the materials was under obligation to proceed under that section.

8 DLR 298- Hafizur Rahman Vs. Abdul Kader Talukder :- Provisions of the section are to be invoked on the occasion of grave emergency or imminent danger. If a public nuisance is allowed stand for a long time the section will not be applicable.

134. Service or notification of order.— (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may fittest for conveying the information to such person.

135. Person to whom order is addressed to obey or show cause or claim jury.— The person against whom such order is made shall -

(a) perform, within the time and in the manner specified in the order, the act directed thereby; or

(b) appear in accordance with such order and show cause against the same.

136. Consequence of his failing to do so.— If such person does not perform such act or appear and show cause he shall be liable to the penalty prescribed in that behalf in section 188 of the Penal Code and the order shall be made absolute.

137. Procedure where he appears to show cause.— (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter ²[in the manner provided in Chapter XX.]

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

Note

Chapter X deals with public Nuisances and contains Section 132 to 143. The amendment in sub-section (1) lays down the procedure to be followed in a case of such nature.

139A. Procedure where existence of public right is denied.— (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of anyway, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 137 inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137.

(3) A person who has on being questioned by the Magistrate under sub-section (1) failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial

140. Procedure on order being made absolute.— (1) When an order has been made absolute under section 136 or section 137 the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Penal Code.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorise its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

141. Omitted vide Ordinance No XLIX of 1978.

142. Injunction pending inquiry.— (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

143. Magistrate may prohibit repetition or continuance of public nuisance.— A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Penal Code or any special law.



CHAPTER XI

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER

144. Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.— (1) In cases where in the opinion of a District Magistrate, Sub-divisional Magistrate, or of any other Magistrate not being a Magistrate of the third class specially empowered by the Government or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed, *ex parte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under this section shall remain in force for more than two months from the making thereof: unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Government by notification in the official Gazette, otherwise directs.

(7) The provisions of this section shall not apply to a Metropolitan Area.

Note

Considering the importance of the section some rulings are cited below for guidance :

26 DLR 376-Oli Ahad Vs. Government: Successive or repetition of the same orders, held illegal. Orders to operate beyond two months are without jurisdiction.

12 DLR 166-M. Siddique Vs. M.A. Razzak: Order under section 144 can be passed in respect of movable property in the custody of criminal courts are invalid. A prohibitory order under section 144 is not a sentence of punishment. A criminal court has no power to adjudicate on civil disputes.

6 DLR 427- Sripati Biswas Vs. Rajendra Nath Majhi: Under section 144 Cr.P.C. a Magistrate had no jurisdiction to issue notice upon the parties to file written statements before him showing cause by a certain date. An order under this section can only be passed by such Magistrates as are specifically mentioned in the section itself and the case cannot be transferred to a Subordinate Magistrate.

4 DLR 490-Mofiz Ali Vs. Rajab Ali: Order under section 144 Cr.P.C. served on the complainant prohibiting him from entering upon the land. Paddy taken from the land thereafter. No charge will lie under section 379 P.C. for taking paddy out of the possession of the complainant (Ref: 10 DLR 366).

22 DLR 427 - Joynal Abedin Dhali Vs. Mahbullah Matbar : An order under section 144 when to be converted to one under section 145 Cr. P. C. explained.

6 DLR 427-Sripati Biswas Vs. Rajendra Nath Majhi: Under sub-section 4 of section 144 the power of rescinding an order under section 144 is given only to the Magistrate mentioned in sub-sec.(4). A subordinate Magistrate, therefore, had no jurisdiction to rescind or modify an order under section 144 passed by the Sub-divisional Magistrate.

CHAPTER XII

DISPUTES AS TO IMMOVEABLE PROPERTY

145 Procedure where dispute concerning and, etc., is likely to cause breach of peace.— (1) Whenever a Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

Inquiry as to possession.— (4) The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so

put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject :

Provided that, if appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date :

Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed: and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

Party in possession to retain possession until legally evicted.— (6) If the Magistrate decides that one of the parties was or should under the first proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and

natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Note

Considering the importance of the Section some ruling are cited below for guidance:

7 DLR 97 — Haji Najar Md. Bs. Harisuddin— Magistrate on his satisfaction can draw up proceeding and then transfer to another Magistrate for disposal. Alternatively he can transfer the petition itself to another Magistrate for disposal according to law.

25 DLR 322-Sudhanshu Kr. Dey Vs. Abdul Aziz-For assumption of jurisdiction and passing orders under section 145 all that is necessary is existence of dispute likely to cause breach of the peace. Magistrate's satisfaction about that from police-report is enough. Examination of witnesses are not necessary.

30 DLR 164-Maram Ali Vs. The State—Dispute over possession of land- Proceeding to be drawn up should be under sec. 145.

29 DLR 72- Sultanuddin Ahmed Vs. Murshed Ali-Question of possession is to be decided by the Magistrate after taking evidence as required section (4) of sec. 145 Cr.P.C.

21 DLR 322*- Yunus Meah Vs. Abdur Rashid-Magistrate acting under section 145 (4) has to decide the possession of the subject of dispute without reference to the merits of the claim of any party. He is not concerned with previous possession or how possession was obtained. Possession must be proved by direct and positive evidence. Actual possession cannot be inferred from document.

26 DLR 437-Jafar Ahmed Khondakar Vs. Badiul Sikder-"Hear the party" means hear the arguments of the party.

27 DLR 260-Abdul Farah Molla Vs. A.K.M. Mozammel Huq Sikder-Magistrate's jurisdiction ousted where the dispute concerning the land is finally decided by a civil court.

25 DLR 317— Syed Zaman Khondakar Vs. Zobeda Khatun—section 145 does not contemplate dispute between a party claiming joint possession and another contesting it. Police-report about possession is not admissible in evidence.

23 DLR 14 SC— Shah Mohammad Vs. Huq Newaz—Criminal court has no jurisdiction to attach any property while the same property is a subject matter of a civil dispute and in respect of which the civil court has passed an order of injunction to maintain statusquo or passed a decree. Where a civil court is in seisin of a disputed property in respect of which the court has appointed a receiver or has passed a decree, the criminal court is incompetent to proceed against the same property or appoint a receiver in respect of it. Violation of an order or decree of a civil court passed respect of a property in a suit is an offence which is not a 'dispute' within the meaning of section 145 and such not attract section 145. In such, violators are liable for contempt of court (Ref: 2BCR 321-SC).

31 DLR 150 SC— Shamsul Alam Vs. Kanak Chandra Shome—Attachment disputed property and simultaneous appointment receiver is valid.

19 DLR 48— Khirode Chandra Shaha Vs. Mofazzal Hossain—Service of the preliminary order on both the parties mandatory, failure of which renders the proceeding null and void.

1 BLD 213 SC-Md. Mafzallur Rahman Vs. Abdus Salam- When the order of SDM calling for record and fixing date of hearing was communicated, only because further proceeding in the 145 proceeding was not stayed by the SDM, the Magistrate cannot be said to be competent to dispose of the case finally, that is, by dropping the proceeding under section 145(5) of Cr. P.C.

3 BCR 111 SC- Sahadat Ali Vs. The State- After admitting the application for revision, the superior court is competent to stay the impugned order before it.

34 DLR 98 SC- Banabir Purakayastha Vs. Alekjan Bibi- It is to be remembered that the prayer for injunction regarding possession of the land was not granted, though there is no specific refusal either. In such circumstances, if there is a serious apprehension of breach of peace which is apparent from the record, the exercise of the Magistrate's jurisdiction is called for. Ends of justice would be met if the Magistrate is directed not to pass any final order regarding possession till the disposal of the suit by the trial court.

33 DLR 399—Abdul Hamid Vs. The State—After attachment of the proceeding lands under the second proviso to S 145(5) Cr.-P.C, the Sub-Divisional Magistrate had to take steps for proper custody and maintenance of the proceedings lands.

21 DLR 212 WP-Khitab Gul Vs. Niaz Mohammad-Omission by a Magistrate in a complaint under section 145 Cr. P.C. to draw up the necessary original order under section 145(1) and to affix its copy at the spot under section 145(3) vitiates all the proceedings and the final order passed therein is liable to be set aside. Such material irregularity is not curable under section 537 Cr. P.C.

35 DLR 229-Md. Hossain Vs. Kalachand-A proceeding under section 145 of the Code of Criminal Procedure is not a proceeding to decide disputed question of title. An inquiry under section 145 of the Code of Criminal Procedure is limited to the question as to who was in possession in fact at the relevant time. If the Magistrate finds that there is no dispute or there is no likelihood of the breach of peace he may drop the proceeding without further inquiry.

Law requires the other party who had not been found in possession to establish his right and title, if any, in the disputed property before the civil court and to get recovery of possession thereafter in due course of law. Until that is done the order of the Magistrate passed u/s 145 of the Code as to the right to possess is final.

36 DLR 3- Jamila Mannan Vs. Aminur Rasul alias Farid Mia— If other elements are present mere omission to state the grounds of his being satisfied as to breach of peace, is curable under law.

Magistrate need not pass the order of restraint once the property is attached and a receiver appointed.

36 DLR 31-Jamila Mannan Vs. Aminur Rasul alias Farid Mia-If possession is found with one party sub-section (4) of section 145 will apply. If no decision can be arrived at as to possession section 146 will apply.

35 DLR 286-Harunur Rashid Halder Vs. Entaj Sheik-The overriding consideration of an emergency would be the guiding factor in giving jurisdiction to the Magistrate to pass an order because an order passed under the second proviso to sub-section (4) of section 145 Cr.P.C. would be passed only in case of an emergency.

36 DLR 141-Abu Sadek Vs. Md. Nurul Alam-If the Magistrate considers the case as one of emergency, he may attach the land in dispute pending his decision under this section.

35 DLR 286-Harunur Rashid Halder Vs. Entaj Sheik-An order u/s 145(4) is final in between the parties and their successors, only remedy thereafter is for the unsuccessful party to sue in civil court whose decision shall be binding and the Magistrate would put the successful party in possession of the disputed property in accordance with the decision of civil court.

146. Power to attach subject of dispute.— (1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent court has determined the rights of the parties thereto, or the person entitled to possession thereof :

Provided that the Metropolitan Magistrate or the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure, 1908.

Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

147. Disputes concerning rights of use of immovable property, etc.— (1) Whenever, any Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exist regarding any alleged, right of user of any land or water as explained in section 145, sub-section (2) (whether such rights be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right :

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.

148. Local inquiry.— (1) Whenever a local inquiry is necessary for the purposes of this Chapter, any district Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

Order as to costs.— (3) When any costs have been incurred by any party to a proceeding under this Chapter the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. Such costs may include any expenses incurred in respect of witnesses, and of advocate fees, which the Court may consider reasonable.
