THE
CODE OF CRIMINAL PROCEDURE, 1898
(ACT NO. V Of 1898)

[22nd March, 1898]

An Act to consolidate and amend the law relating to the Criminal Procedure up to date.

Whereas, it is expedient to consolidate and amend the law relating to Criminal Procedure, it is hereby enacted as follows :–

PART I

PRELIMINARY

CHAPTER–I

1. Short title and Commencement.—(1) This Act may be called the Code of Criminal Procedure, 1898; and it shall come into force on the first day of July, 1898

Extent.—(2) It extends to the whole of Bangladesh, but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Scope and application—The name "Criminal Procedure" indicates that all the offences whether of the Penal Code or of other laws are "Criminal", in the sense that the same Criminal Procedure is followed in respect of all of them. The Criminal law covers the whole range of offences. The Criminal Procedure Code "though mainly an adjective or procedural law deals with many other things." It deals with the constitution of Criminal courts, classifies them, defines their powers, lays down the procedure for criminal proceedings, inquiries or trials, prescribes the duties of the Police in arresting offenders and investigating offences and also contains provisions for their prevention. Criminal Procedure Code must be strictly

construed in favour of the accused. The great object of the Penal Law is the prevention of offences by the example of punishment, the intent of all Codes of Procedure is to ensure this and therefore, man-made system is imperfect which permits the form to defeat the substance of the law, and a criminal may even escape punishment from any defect of form in his prosecution. The worst criminals may escape through the flaws of procedure although the substantive Penal law may be the perfection of reason and wisdom. The law relating to Criminal Procedure is applicable to all criminal proceedings in Bangladesh is contained in the Code of Criminal Procedure. The amendments of 1978 and subsequent amendments made from time to time are extensive and intended to simplify procedures and speed up trials as far as possible. The Criminal law is the substantive law, the Code of Criminal Procedure is the adjective law. The word "Code" means a collection or system of laws. The "Code" is exhaustive on the matters in respect of which it declares the law (6 CWN 825 PC). The Muslim law of Crimes remained in force for sometimes but it was reformed step by step. Regulation VI of 1832 marked the end of Muslim Criminal law as law of the undivided India.

Important Changes have been made in the law of Criminal Procedure for speedier disposal of Criminal cases and these are noted below :—

(i) The preliminary inquiry otherwise known as committal proceeding is abolished, since it causes delay.

(ii) Jury trial has been abolished.

(iii) Trial of summons and warrant cases has been omitted and in its place chapter XX of the trial of cases by Magistrates has been introduced.

(iv) Power of revision under section 439A has been given to the Sessions Judge and the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court Division under section 439 except quashing the proceedings.

(v) A provision has been made for the production of witnesses under section 171 clause (2) and it shall be the responsibility of the police officer to ensure that the complainant or the witnesses appear before the court at the time of the hearing of the case.

(vi) The continuation of part heard cases by successors in office in respect of Court of Magistrate and the same Courts of Sessions, that means abolition of denovo trial.

(vii) A provision has been made under section 339B for trial of accused persons in absentia under the circumstances mentioned in the section.

(viii) Time limit for investigation and disposal of cases by the Court of Magistrates as well as Sessions Judges has been made in section 339C of the Code of Criminal Procedure, as lastly amended in Act No. XLII dated 1. 11. 92.

(ix) The scope of summary trials has been extended by including many offences in chapter XXII.

32 DLR 1 (SC)—Bangladesh Vs. Shahjahan Siraj—The existence of a special law, however, does not mean exclusion of the Code, unless the special law expressly or impliedly provides that certain offences shall be tried exclusively by courts constituted. The effect of section 1 (2) in the background of section 29 of the Code is that where the special law provides for trial of particular offences by particular courts they shall be so tried exclusively. Every Court, in the absence of any express provision in the Code for that purpose, must be deemed to possess, as inherent in its constitution, all such powers as are necessary to do the right and to undo a wrong in the course of the administration of justice. A Special Tribunal, although a criminal court, constituted by the Special Statute, is not a criminal court within the meaning of the Criminal Procedure.

20 DLR 271 (WP)—Gahena Vs. The State—The words "in the absence of any specific provision to the contrary" in S. 1(2) mean and contemplated a provision specific in affecting the

special or local law. It means that there may be a specific provision in the special or local law that the Cr. P. C will apply to the Proceedings under the Act. If it is not so provided, Cr. P. C will not apply.

9 DLR 20A (SC)—Chief Secretary, East Pakistan Vs. Muslehuddin—The E. P. Ordinance XII of 1956 being a special law, all its provisions as regards the jurisdiction of the courts and procedure to be followed are saved by S. 1(2) and S. 5(2) of the Cr. P. C.

Saving clause, meaning of—A saving clause is inserted when a statute is repealed and re-enacted. It keeps in force the rights, the party had previously. They safeguard rights, which but for the savings would be lost.

The Criminal Procedure Code though mainly an adjective or procedural law deals with many other things. It deals with the constitution of criminal courts, classifies them, defines their powers, lays down the procedure for criminal proceedings, inquiries or trials, prescribes the duties of the police in arresting offenders and investigating offences and also contains provisions for their prevention. Criminal Procedure Code must be strictly construed in favour of the accused.

Process of Criminal Prosecution—The process is in three stages, known as : (a) investigation (b) inquiry or (c) trial. In the first stage, a police officer either by himself or under orders of a Magistrate investigates into a case (sec. 202 Cr. P. C). In the case of non-commission of any offence, the case comes to an end when the Magistrate drops the proceedings on a police report. Where the police sends up a case to the Magistrate, the second stage begins and this may be either an inquiry or a trial. The Magistrate may either convict the accused or discharge or acquit him. In serious cases the trial is held by the Court of Sessions, which may either discharge the accused or convict or acquit him (Chapter XXIII).

Trial—The world "trial" is not defined in the Code. The words "try" and "trial" have no fixed universal meaning. The word "trial" means the entire proceedings before a tribunal

from the reference it to the conclusion including the sentence. A trial means a proceeding with commences when the case is called on, with the Judge or Magistrate on the Bench. The accused is in dock and the representatives for the prosecution, and defence, if the accused be defended, are present in Court for hearing of the case. A trial is a judicial proceedings which ends in conviction or acquittal. The function of the court is to try the issue that is put before it. The prosecution selects the charge or charges and court has to say in what the charge is, to be. The function of a Judge at a criminal trial is essentially that of an umpire-he must see that the rules of the game are observed (AIR 1966 (SC) 69). Arguments are part of the trial which must be held to include the judgement, "Cognizance of an offence" by a court and "trial of an offence" by court are two distinct procedures in the Code.

Case—The word 'case' has not been defined in the Code of Criminal Procedure. But there is no doubt that when cognizable offence is lodged with the police, and the police sends a report of the same to a Magistrate empowered to take Cognizance of such offence on a police-report, it becomes a case pending before a criminal court. The word "case" is to be examined in connection with the two processes summons and warrant. A summon is the Process by which a proceedings is started and it becomes a case.

33 DLR 154 (SC)—Khondakar Ehtesamuddin Ahmed alias Iqbal Vs. Bangladesh and others—When a cognizable offence is lodged with the police and the police sends a report of the same to a Magistrate empowered to take cognizance of such offence on a police report, it becomes a case pending before a criminal court.

The Air Space—As to the air space over occupied land and water there have been several theories of State sovereignty. Since the first world War the theory of sovereignty to an unlimited height has gained momentum. This means that land has an indefinite extent upwards so that by a conveyance of land all buildings, growing timber and water like wise pass. Thus any interference with the super incumbent column of air may give rise to an action of trespass or

nuisance. The Paris Conference of 1919 states "every State has complete and exclusive sovereingnty in the air space above its territory and territorial waters". However in recent years there has been a shift towards limitation of sovereignty in respect of the exploration and use of the water space, including the moon and other celestial bodies "Outer space," including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use of occupation or by any other means.

Schedule and Forms—Schedules have been appended to the Code of Criminal Procedure. It may be mere forms of examples of the way in which an enactment is to be carried out in practice or may contain provisions important in themselves. The latter kind is illustrated by the Second Schedule to the Code of Criminal Procedure. This Schedule sets out the offences under the Penal Code which are (a) bailable or (b) non bailable under section 4 (1) (b).

Forms in Schedules are inserted merely as examples to be followed implicitly as far as the circumstances of each case may admit. Scheduled forms are always dangerous guides to the meaning of a Statute (AIR 1941 Rangoon 135). An offence punishable with imprisonment for 5 years may be still non-cognizable if the Statute creating the offence does not intend to confer on the police officer the power to arrest without warrant.

2. Repealed.

3. (1) Omitted.

Expressions in former Acts.—(2) In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate". "Subordinate Magistrate, first class". and "Subordinate Magistrate, second class" shall respectively be deemed to mean "Magistrate of the first class". "Magistrate of the second class" and "Magistrate of the third class", the expression "Magistrate of the district" shall be deemed to mean "District Magistrate" and the expression "Joint Sessions Judge" shall mean "Additional Sessions Judge".

4. Definitions.—(1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context :—

(a) **"Advocate".** "advocate" used with reference to any proceeding in any Court, means an advocate or a mukhter authorised under any law for the time being in force to practise in any such Court and includes any other person appointed with the permission of the Court to act in such proceeding;

(aa) **"Attorney-General".** means the Attorney-General for Bangladesh, and includes also the Additional Attorney-General, the Deputy Attorney-General or the Assistant Attorney-General for Bangladesh, or. a Government advocate or such officer as the Government may, from time to time, appoint in this behalf;

56 DLR 324—Saifuzzaman (Md) Vs. State—Sections 4(1) & 167—The provisions intend to prevent any possible abuse by the police officer of his power while trying to make discovery of crime by means of wrongful confinement and do not intend to protect illegal act of the police officer.

35 DLR 165—Md. Mustafa Anwar Vs. The State—Deputy Attorney General cannot appear on behalf of a private party, in a Criminal case, when he is already appearing for the State in the same case. Government lawyers should not appear for private party in a case in which Government is a party.

(b) **"Bailable offence" "Non-bailable offence".** "Bailable offence" means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence :

"Bail" and "Bailable offence," what mean—"Bail" means release of a person from legal custody. A "bailable offence" is an offence where bail can be claimed as a matter of right (S. 496). As soon as it appears that the accused person is prepared to give bail bond, the police officer or the court before whom he offers to give bail bond, is bound to release him on

such terms as to bail as may appear to the officer or the court to be reasonable. If the conduct of the accused person subsequent to his release on bail puts in jeopardy the progress of a fair trial itself and if there is no other remedy which can effectively be used against the accused person, the inherent power of the High Court Division be legitmately invoked under section 561A of the Code. In a bailable case the law leaves no discretion to the Magistrate or Judge and bail should be granted (AIR 1942 Mad 740). In a case where an accused who was accused of a bailable offence was enlarged on bail and subsequently the prosecution moved the court for cancellation of the bail on the ground that the accused was proving troublesome and dangerous and that he was tempering with the prosecution evidence by threatening their lives, the trying Magistrate has no power to cancel the bail in a case in which the accused was entitled to be on bail as a matter of right. The utmost which the trying Magistrate could do was to enhance the amount of bail (38 Cr. LJ 752). The term "bailable" is selected first and then the expression "non-bailable" derived from it. Hence the term "non-bailable" offence means any offence other than the bailable one. There are offences under the Code which are called "bailable" offence and others called "non-bailable" offence. Fifth column of Schedule II of the Code shows offences which are "bailable" and which are "non-bailable". The criterion of such classification is not given. Bailable offences are generally regarded as less grave and serious than non-bailable offences. A yardstick has been laid down for the classification of offences against other laws. This is as follows : (a) the offence is to be treated as "bailable" if it is punishable with imprisonment for not more than two years or with fine only; and (b) the offence is "non-bailable" if it is punishable with (i) imprisonment for two years and upwards, or (ii) imprisonment for transportation for life, or (iii) death, (iv) and in Arms Act case under section 19A, (v) সন্ত্রাসমূলক অপরাধ দমন আইন (vi) Cruelty to Woman Act.

"Non-bailable" is not what may be called the "non-bailable". i. e. a negative of exclusion or denial.

If the Court is satisfied that the person apprehended can be enlarged on bail without any justifiable risk, as a general rule, bail should almost invariably be granted. The liberal policy of law regarding bail is further manifest from the fact

that the proviso to sub-section (1) of section 497 provides for releasing a person who is under 16 years or any woman or a sick or infirm person, even though any such person has been charged with offence punishable with death.

15 DLR 429 (SC)—Mian Mahmud Ali Qasuri Vs. The State—In bailable offences, the person accused has the indefeasible right to grant of bail subject to satisfactory sureties being offered, if necessary.

(c) **"Charge"** includes any head of charge when the "charge". charge contains more heads than one;

Charge, what it is—The Code does not define what a "charge" is. The meaning of it is to be gathered from judicial interpretations. In short, charge is the precise formulation of the specific accusation made against a person, who is entitled to know its nature at the earliest stage (AIR 1945 All 81).

(d) Repealed.

(e) **"Clerk of the State".**—"Clerk of the State" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the "Clerk of the state";

(f) **"Cognizable offence" "Cognizable case".**—"Cognizable offence" means an offence for, and "cognizable case" means a case in which a police-officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant;

Offence—Offences are divided into cognizable and non-cognizable. The word "offence" is defined in S. 4 (1) (0) of the Code, but not the word "case" though its meaning is well understood in legal circles. The word "case" must mean a proceeding which at the end results either in discharge, conviction or acquittal of an accused person.

32 DLR 100 (SC)—Dr. Muzammel Huq Chowdhury Vs. Chief Martial Law Administrator and others—The expression "case" has not been defined in the Cr. P. C., Clauses (f) and (n) of S. 4 Cr. P. C., however have defined what is "cognizable

case" or "non-cognizable case" respectively. A cognizable case means a case in which a Police Officer, within or without presidency towns may, in accordance with the second schedule or under any law for the time being in force arrest without warrant. Similarly, a non-cognizable case means a case in which police officer, within or without a presidence town, may not arrest without warrant. Whether an offence is cognizable or non-cognizable, it becomes a "case" as soon as some offence by any person has been committed. Facts constituting an offence make them a "case" much earlier than the submission of a charge-sheet in respect of them by the police or cognizance of the offence has been taken by the court duly empowered on the said police report.

16 BLD (AD) 206—Tamizul Haque Vs. Anisul Haque—Complaint by an Attorney :

It is a settled principle of criminal law that any person having knowledge of any offence may set the law in motion by making a complaint to the appropriate authority even though he is not personally aggrieved.

The holder of a duly constituted power of attorney is competent to file and prosecute a criminal case on behalf of the grantor before a competent Court and he is entitled to do every necessary thing in that connection on behalf of the grantor.

(g) Omitted.

(h) **"Complaint"**.—"complaint" means the allegation made orally or in writing to a magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer;

7 BLD 100 (AD)—The State Vs. Aynuzzaman—Complaint-meaning of-In order to constitute a complaint an allegation must be made to a Magistrate—Such an allegation does not include the report of the police officer.

Complaint, what it is—Any allegation made orally or in writing may constitute a complaint if the following conditions are fulfilled : (1) it is made to a Magistrate, (2) it is made with a view to his taking action under the Code, (3) it asserts that some person, whether known or unknown has committed an offence, and (4) it must not be a police report as defined in this Code. "The question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict. But by itself it affords no ground for dismissing the complaint" (AIR 1970 (SC) 962). Rules of limitation are foreign to the administration of criminal justice. A complaint need not necessarily be made by the person injured but may be made by any person aware of the offence. The rule is that if a general law is broken any person has a right to complain, whether he himself has suffered any particular injury or not (37 Cr. LJ 56). The report of a police officer whether in a non-cognizable offence or in a cognizable offence does not amount to a complaint (51 Cr. LJ 427).

5 PLD 72 BJ—Golam Mohammad Vs. Golam Md. Khan—Complaint does not require statement of facts beyond allegation that some persons have committed an offence.

(hh) **"Court of Session"** includes a metropolitan Court of Session;

(i) Omitted.

(j) **"High Court Division".** "High Court Division" means the High Court Division for criminal appeal or revision;

(k) **"Inquiry".** "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court;

Inquiry, what it means—The word "inquiry is meant to include everything done in a case by a Magistrate whether a case has been challaned or not and the word "inquiry" relates to proceedings of Magistrate prior to trial. An order for further inquiry dose not necessarily make it obligatory to proceed once again under section 202 Cr. P. C but further inquiry includes additional investigation of facts and where no additional

evidence is forthcoming it stands for a rehearing or re-consideration of the same materials (75 CWN 315, 23 DLR 121).

(l) **"Investigation"**. "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorised by Magistrate in this behalf;

Scope and application—A full-fledged criminal case is a drama in three Acts. Investigation, inquiry and trial are its three successive acts. The first act has two scenes—complaint and information. The first scene opens at a Magistrate's court where the complainant is examined on oath by the Magistrate. It may then shift to the police officer or to other authorised person for investigation under section 202 of the Code. On the investigation report the complaint is dismissed by the Magistrate under section 203 Cr. P.C. Similar is the case with information lodged with the police under section 154 in cognizable cases. This represents the second scene showing the officer-in-charge of a police station investigating the case. The drama then moves on to the second act which may show either the trial or the inquiry. Naturally therefore, these two scenes are enacted in the third act. The Magistrate or the Sessions Judge proceeds with the trial. An "investigation" is a systematic minute, and through attempt to learn the facts about something complex or hidden, it is often formal and official. It has two main elements : (1) the necessary proceedings for the collection of evidence, and (2) the evidence is to be collected by a police officer or by a person other than a Magistrate who is authorised by a Magistrate to do so. For the purpose of investigation, offences are divided into two categories—cognizable and non-cognizable.

Difference between Inquiry, Investigation and Trial—A clear distinction is made by the Code between an inquiry and an investigation. An inquiry relates to a proceeding held by a court or a Magistrate while an investigation relates to the

steps taken by a police officer or a person other than a Magistrate who is authorised by a Magistrate for the purpose. An investigation can never be judicial but an inquiry may be judicial or non-judicial. A trial is judicial while an investigation is administrative.

30 DLR 112 (SC)—Mir Mosharraf Hussain and another Vs. The State—Under the Code of Criminal Procedure, the word "investigation" generally consists of the following steps : (1) proceeding to the spot, (2) ascertainment of facts and circumstances of the case, (3) discovery and the arrest of the suspected offender or offenders, (4) collection of evidence relating to the commission of the offence alleged which may consist of (a) examination of various persons including the accused and the reduction of their statements into writing if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial and (5) formation of the opinion as to whether on the materials collected there is a case to place the accused before a court for trial and if so, taking the necessary steps for the same by the filing of a charge-sheet under section 173 Cr. P. C.

20 DLR 48 (WP) Lahore—Golam Abbas Vs. The State—"Investigation", when deemed to begin—Agreement to receive bribe, and actual receipt of bribe are two offences. Investigation begins at different moments. Investigation follows the suspected commission of the offence and does not precede it.

(m) **"Judicial Proceeding"**. "Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;

29 DLR 256 (SC)—Abdur Rahman Vs. The State—Order of discharge is not a judicial order.

19 DLR 355—Aziza Khatun Vs. The State—Officer acting under S. 93A of the Dhaka Town Improvement Act is not engaged in judicial proceeding within the meaning of S. 4(1) (m) of the Code.

14 DLR 511—Abu Vs. The State—Magistrate's order discharging an accused on police report is a judicial order.

(n) **"Non-cognizable, offence", "Non-cognizable case."** "Non-cognizable offence" means an offence for, and "non-cognizable case" means a case, in which a police officer, may not arrest whithout warrant;

Effect of non-cognizable offence—The effect of an offence being non-cognizable is that a police officer cannot investigate this without an order from a Magistrate under section 155 (2) nor can he make a search under section 165 (24 Cal. 691, 37 DLR 223).

(o) **"Offence".** "Offence" means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made under section 20 of the Cattle-tres-pass Act, 1871;

Scope and application—The word "offence" is a comprehensive term embracing every act committed or omitted in violation of a penal law forbidding or commanding it. The word 'crime' generally denotes an offence of a serious kind. It is the act and not the transaction that constitutes an offence.

PLD 1960 Lah 31—Offence includes the abetment of or attempt to commit the offence.

(p) **"Officer-in-charge of a police-station".** "Officer-in-charge of a police-station" includes when the officer-in-charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the Government so directs, any other police officer so present;

(q) **"Place".** "place" include also a house, building, tent and vessel;

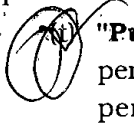
49 DLR (AD) 157—Sayeed Farook Rahman Vs. Sessions Judge of the Court of Sessions, Dhaka and others—The meaning assigned to the word "public" strongly indicates that a particular case may also be tried in a place other than the normal place where the sitting of the Court of Sessions takes place. [Ref. 4 BLT (AD) 225].

(r) Omitted.

(s) **"Police-station".** "Police-station" means any post or place declared generally or specially, by the Government to be a police-station, and includes any local area specified by the Government in this behalf;

Police-station, what it is—A police-station is the lowest unit for the exercise of criminal jurisdiction. The limits of the police-station are fixed by notification. A beat house unless it is declared generally or specially by the Government to be a police-station it cannot be a police-station. In the absence of such a declaration, an information lodged with the beat-house would not amount to a first information report within the meaning of S. 154 (AIR 1960 Cal. 519).

7 BLC (HC) 306—Nikinjan Biswas alias Dholu Vs. State (Criminal)—Sections 4(1)(s) and 177—As there is nothing to show that any notification altering the limit of Chittalmari PS has been made, it will be legally presumed that the area still continued to be the part of Chittalmari PS and hence neither the learned Magistrate nor the learned Sessions Judge committed any error or illegality in rejecting the prayer of the petitioner filed under section 177 of the Code.



(t) **"Public Prosecutor".** "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a public prosecutor;

Scope and application—The duty of a Public Prosecutor is to represent not the police but the Government and his duty should be discharged by him fairly and fearlessly and with a full sense of the responsibility that attaches to his position. A Public Prosecutor is lawfully empowered to present the appeals in the High Court Division against orders of acquittal.

35 DLR 165—Mustafa Anwar Vs. The State—Government lawyers should not appear for private party in a case in which Government is a party.

12 DLR 324—The Superintendent and Remembrancer of legal affairs Vs. Aminul Huq—Public Prosecutor includes Assistant Public Prosecutor and any other person who conducts a prosecution under the direction of a Public Prosecutor.

(u) **"Sub-division".** "Sub-division" means sub-division of a district;

(v) Omitted.

(w) Omitted.

(2) **Words referring to Acts.** Words which refer to acts done, extend also to illegal omissions; and

Words to have same meaning as in Penal Code. all words and expressions used herein and defined in the Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

5. Trial of offences under Penal Code.—(1) All offences under the Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) **Trial of offences against other laws.**—All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Decisions

52 DLR (AD) 51—N.I. Talukdar Vs. The State—Where the charge has been framed under section 409 of the Penal Code and section 5(2) of Act II of 1947, and in the absence of any provision for revival of the case on the expiry of the period of 2 years provided in section 8(a) of the Criminal Law Amendment (Amendment) Act there was no legal authority to revive the case under the provision of the Code of Criminal Procedure Code.

37 DLR 59—Abul Hossain Vs. The State—Provisions of the Criminal Procedure Code when applicable to the Special Powers Act.

21 DLR 1—Alok Kumar Mitra Vs. The State—Where a special law created an offence and has at the same time provided a special procedure for its investigation, inquiry and trial then the provisions of special law shall prevail and appeal against conviction will lie under section 408 Cr. P. C to the Sessions Judge.

20 DLR 970—Saleh Ahmed Vs. The State—Martial Law Regulation cases can be tried by Sessions Court after the Martial law is lifted.

18 DLR 176 (SC)—Noor Hossain Vs. The State—Magistrate cannot impose a sentence which is in excess of his powers even under special law.

24 BLD 468 (HC)—Dudu Miah & Ors. Vs. The State—In order to constitute an offence under the Nari-O-Shishu Nirjatan Ain, the prosecution is required to prove that the accused persons have committed an offence specified in Nari-O-Shishu Nirjatan Bishesh Bidhan Ain, 1995. The Bishesh Adalat has no power to hold trial of offences under the Penal COde. Section 5(1) of the Cr.P.C provides that offences under the Penal Code are to be enquired into and tried in accordance with the provisions of the Cr.P.C.

5 BLD 278 (AD)—Kalipada Shaha Vs. The State—Offence under the Drug Ordinance. Forum for investigation and trial. The proceeding before the Magistrate was without jurisdiction in as much as special procedure has been provided for investigation of the offence by designated class of officer and a special court has been set up for the purpose. The case can only be tried by a Drug Court situated at Dhaka and not by the Upazila Magistrate. The case is accordingly transferred to the Drug Court at Dhaka for trial. [Ref. 1980 P. Cr. LJ—170 (Lahore); 5 DLR 251 (SC)].

5 BLC 416—Arjun Saha and ors Vs. State—Section 5(2) and 561A -In the absence of any provision as to in which

court the offence under মাদক দ্রব্য নিয়ন্ত্রন আইন, 1990 are triable the provisions of section 5(2), Cr.P.C will apply and the trial should be held in the Court as mentioned in the second schedule to the Code of Criminal Procedure under the heading "offences against other laws" As the punishment has provided for the offences under section 19(1), 6(Kha), 22(Ga) and 25 of the Ain of 1990 exceeds imprisonment for more than 5 years, the offences are only triable by the Court of Session and the contention that the case is not triable by the Court of Session is not sustainable and the proceeding are not liable to be quashed.

5 BCR 251 (SC)—Kalipada Saha Vs. The State—It is possible that an act may be an offence both under special Law as well as under general law, both law being applicable simultaneously (33 Cr. LJ 309). It would be more appropriate to prosecute the offender under the Special Act.

5 BCR 184—Maqbul Ahmad Vs. Hamidul Bari—Labour Court trying an offence under the Industrial Relations Ordinance, 1969 is deemed to be a Court of Sessions under the Code of Criminal Procedure and is, therefore, inferior to the High Court Division for the purpose of section 561A Cr. P. C.

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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.

Magistrate and Court—The term "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under this Code for the time being in force. Court is a place where justice is judicially administered. A Magistrate as such is not a court unless he is acting in a judicial capacity. The use of the term "Magistrate" instead of "Court" does not by itself imply that he acts as a person designate and not as court. The words "Criminal court" shall denote every Judge or Magistrate lawfully exercising jurisdiction in criminal cases, whether for the decision of such cases in the first instance or an appeal or for sending a case to the Court of Session.

37 DLR 26—The State Vs. Abdul Karim Sarkar—Dignity, independence of the Courts of Law must at all costs be upheld, otherwise society will collapse.

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 district or consist of districts.

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

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

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

Scope and application—The conception underlying a division is that a Sessions Judge is presiding over a division, the conception underlying a District is that there is a District Magistrate for each district, so a Sessions Division is not identical with a district though territorially one may be equivalent to a district. Government constituted many districts and sessions division for the purpose of administration of Justice locally and for the convenience of the people.

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.

(2) **Existing sub-divisions maintained.** 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 Session for a Metropolitan Area shall be called the Metropolitan Court of Session.

(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 Session 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.

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 Session existing when this Code comes into force shall be deemed to have been established under this Act.

Scope and application—The Government is bound to appoint a Court of session for every sessions division and Court of Session is a class of courts different from the High Court Division. There is only one court of session for every sessions division, though it may be manned by several Judges. A Sessions Judge has jurisdiction only within his division. There is a distinction between one Additional Sessions Judge and an Assistant Sessions Judge.

By Notification No. ED/FA-52/82-466 dated 8-9-92 the Government invested all Additional District Magistrates with powers to try as Magistrate all offences not punishable with death or with transportation or with imprisonment for a term exceeding 10 years. By another Notification No. ED/FA-28/83-120 dated 6-3-83 the Government invested all Additional District Magistrates with powers to try as Magistrate all offences not punishable with death. All Assistant Sessions Judges are deemed to be Additional Sessions Judges when a District Magistrate, Addl. District Magistrate or any First Class

Magistrate is specially empowered to try any offence. Assistant Sessions Judges deemed to be Additional Sessions Judge may exercise powers and discharge functions of the Additional Sessions Judge subject to any limitaion as may be prescribed (Ref. 4 BCR-24, 5 BLD-41, 4 BLD-250, 35 DLR-362, 37 DLR 204, 36 DLR 93).

50 DLR 192—Ibrahim Khalil Vs. The State—Admission of appeal or revision do not fall in the category of urgent application as mentioned in sub-section (4) of section 17 of the Code. When provisions of sections 9, 17, 408 and 409 of the Code are considered together, it is clear to me that a Sessions Judge-in-charge cannot admit an appeal.

49 DLR (AD) 157—Sayeed Farook Rahman Vs. Sessions Judge of the Court of Sessions, Dhaka and others—A special order cannot be restricted to mean a particular situation according to a pre set formula. [Ref. 2 MLR (AD) P-212].

49 DLR (AD) 157—Sayeed Farook Rahman Vs. Sessions Judge of the Court of Sessions, Dhaka and others—Section 9(2) gives the Government the power to direct at what place or places the Court of Sessions shall hold its sitting. [Ref : 4 BLT (AD) 225].

49 DLR (AD) 157—Sayeed Farook Rahman Vs. Sessions Judge of the Court of Sessions, Dhaka and others—The contention that a Court of Sessions cannot have two sitting places is negatived by the very language of the section itself. [Ref : 17 BLD (AD) 197; 5 BLT (AD) 225].

49 DLR (AD) 157—Sayeed Farook Rahman Vs. Sessions Judge of the Court of Sessions, Dhaka and others—If there is a special order to try a particular case at a particular place the original place of sitting continues to remain the place of sitting of the Court of Sessions and the new place indicated in the special order is meant for trial of only that case or class of cases which the special order specifically provides.

48 DLR 95—Hossain Mohammad Ershad [Former President Lieutenant General (Rtd)] Vs. The State—The order that was passed was absolutely without jurisdiction inasmuch as the place where it was passed was not a Court of Sessions Judge

as contemplated under section 9(2) of the Code of Criminal Procedure.

43 DLR 77 (AD)—Abul Kashem and others Vs. The State—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. He shall not be deemed to be an Additional Sessions Judge for all the purposes under the Code, e. g. for hearing appeals, revisions, reference and reviews if they are made over or transferred to him by the Session Judge under section 409 the Sessions Judge can transfer the hearing of an appeal only to an Additional Sessions Judge and not to an Assistant Sessions Judge deemed to have been appointed as an Additional Sessions Judge. The dismissal in the instant appeal by the Assistant Sessions Judge and refusal of interference by the High Court Division in revision are therefore, illegal. The appeal against conviction is therefore, allowed and it is directed that the Sessions Judge may himself dispose of the appeal or transfer it to an Additional Sessions Judge for disposal.

41 DLR 395 (FB)—Nurul Huda Vs. Baharuddin and others—Assistant Sessions Judge deemed to have been appointed as Additional Sessions Judge does not acquire the status of an Additional Sessions Judge.

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 purposes of sections 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.

Scope and application—Unless a person has been appointed under section 10 (1) of the Code, he cannot be called a District Magistrate, and an Additional District Magistrate or Joint District Magistrate is below the rank of a District Magistrate. The scheme of S. 10 leaves no room for doubt that the District Magistrate and the Additional District Magistrate are two different and distinct authorities. The latter may be empowered under sub-section (2) to exercise all or any one of the powers of a District Magistrate. The appointment is made to relieve the District Magistrate of some of his duties.

10 DLR 205—Abdul Kader Vs Chairman, Dhaka Municipality—Trial of a case transferred to a Magistrate under section 3 (54) of Act XV of 1932 by a Magistrate who is not the District Magistrate is without jurisdiction and section 10 (2) of the Cr. P. C. is not applicable.

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 order of the Government to 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 Magistrate 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 wihtin which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

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

Scope and application—Notification No. JA IV/204/83-640—dated 8th August, 1983. In pursuance of sub-section (1) of section 12 of the Criminal Procedure Code, 1898 (Act V of 1898), the Government is pleased to appoint the Thana Nirbahi Officers to be Magistrates of the first class within their respective Thana and to vest them with powers to take cognizance of any offence under section 190 (1) (a) (b) (c) of the said Code within their respective jurisdictions, where there exists Thana Criminal Court.

The Thana Nirbahi Officer will exercise powers under section 144 Cr. P. C. He will not try any case. However, when the Thana Magistrate is unable to attend the Court on any ground, the (TNO) will sit in Court and perform all other Magisterial functions such taking cognizance of cases, hearing bail matters granting adjournments, etc. Powers under section 133 and 145 Cr. P. C. will normally be exercised by the Thana Magistrate (32 DLR 298).

24 DLR 142—Abdul Hamid Howladar Vs. The Province of East Pakistan—District Magistrate (now the Deputy Commissioner) is competent to alter the local limits of a police station with the concurrence of the Government.

1 BLD 344—Sk. Fazlul Karim Selim Vs. Bangladesh—District Magistrate acting under Act XXIII of 1973 about printing press is a quasi judicial authority and is required to decide giving personal hearing to the person making the declaration, Appeal is provided against his refusal to authenticate.

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 Magistrates shall be called Sub-divisional Magistrates.

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

Scope and application—A Magistrate authorised to act under section 13 Cr. P. C. cannot transfer a case for trial to his own file in a case in which he has not taken cognizance (42 CWN 249). The authority to act under section 13 lies on the prosecution to show that the Magistrate has been empowered to act as such (21 DLR 310 at para 6). Appointment of Magistrate under section 13 (1) with retrospective effect is illegal (1971 Cr. LJ 880 Manipur). Now the office of sub-division is no more in existence. It is abolished.

13A. Thana Magistrate.—(1) The Government may place any Magistrate of the first or second class in a Thana and such Magistrate shall be called the Thana Magistrate.

(2) A Thana Magistrate shall have all the powers of a Sub-divisional Magistrate under this Code.

Scope and application—The Thana Magistrate will be a whole time Magistrate. He will not exercise powers under section 144 Cr. P. C except when he is required to act in absence of Thana Nirbahi Officer. Magisterial powers under minor Acts like Customs Act, Food Ordinance, etc. will be exercised by the Thana Magistrate. The Assistant Commissioners posted at the Thana will function as a Magistrate and will exercise Magisterial powers as vested in him. The Thana Magistrate will accordingly transfer in him all cases which he is competent to try. In addition to his duties of a Magistrates the Assistant Commissioner will act as Thana Planning and Finance Officer (Vide Cabinet Division-Memo No. CD/CG/6 (8)-2 (300) dated 15-12-82).

37 DLR 26--The State Vs. Abdul Karim Sarker—Functions of the decentralised Administration at the thana level-surveyed. Munsifs and Magistrate are working in the new Thana, function independently of Thana Nirbahi Officers.

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 Magistrates 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.

Scope and application—There is a difference between a Magistrate appointed under section 12 and Special Magistrate appointed under section 14. Honorary Magistrate deals with public complaints to remove difficulties of the public as also provides forum for the parties to discuss their greivances against each other and find an amicable solution without resorting to litigation.

Appeal—An appeal from an order of Special Magistrate lies to the Sessions Judge (AIR 1918 Lah. 1961). An appeal from the order of a Special Magistrate forfeiting a surety bond under section 514 Cr. P. C lies to th District Magistrate (PLD 1963 Azad J & K 36).

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 powres in such cases, or, such classes of cases only, and within such local limits, as the Government thinks fit.

(2) **Powers exercisable 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 Magistrate, Benches in any district respecting 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 trials;
(d) the mode of setting differences of opinion which may arise between the Magistrate in session.

Scope and application—There is nothing in this Code which prescribes that any particular class of cases should be tried by Honorary Magistrate (25 Cr. LJ 556).

17. Subordination of Magistrates and Benches to District Magistrate.—(1) All Magistrates appointed under sections 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

(2) **To Sub-divisional Magistrate.** 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.

(3) **Subordination of Assistant Sessions Judges to Sessions Judge.**—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 section 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

Scope and application—"Subordinate" means inferior in rank within the meaning of section 435 Cr. P. C (12 Cal 473). On a reference to sub-section (3), it seems that the Code itself enacts that Assistant Sessions Judge shall be subordinate to the Sessions Judge; but Additional Sessions judge is not subordinate to him (33 Cr. LJ 158). Sub-section (4) does not fetters the power of the Sessions Judge to make general provisions for quick acceptance and effective disposal of urgent matters, like bail petitions, under the circumstances referred to in the said section . From the word "unavoidably" in that sub-section it cannot be said that the provisions of S. 17 (4) are to be restored to only on each such particular occasion. Such a narrow construction is neither called for on the wording of the sub-section, nor should be implied in it, as that will frustrate the beneficial purpose for which the sub-section is provided and will not meet cases, which arise out of the peculiar circumstances and situations in which things are placed. There is nothing in this Code which gives jurisdiction to the Sessions Judge himself to transfer an appeal from the file of an Additional Sessions Judge to his own file. Thana Magistrate is subordinate to the District Magistrate and not to

the Sessions Judge. The Magistrates are subordinate to the Sessions Judge only in so far as is expressly provided in the Code.

11 DLR 77 (WP)—Anwar Mahmud and others Vs. Rashiduzzaman—First class Magistrates are subordinate to the District Magistrate even in respect of judicial functions.

7 DLR 637—Abdul Kader and others Vs. The Crown-Sub-divisional Officer cannot cancel a bail granted by another Magistrate. Sub-divisional Magistrate is not a revising authority over a first class Magistrate under section 17 (2) of the Code. Magistrate who granted the bail can alone cancel it. The Cr. P.C does not recognise any such court as the court of the District Magistrate or the court of the Sub-divisional Magistrate.

5 DLR 86 (WP)—Mupal Vs. Ghulam and others—Additional Sessions judge is not a Court of Session under section 498 unless authorised by Government or the Sessions Judge assigns by General or special order any application to him. S. 17(4) applies only to Sessions Judges and not to Additional Sessions Judge. Additional Sessions Judge has no jurisdiction to entrust his urgent business to District Magistrate.

D.—Courts of Metropolitan Magistrates.

18. Appointment of Metropolitan Magistrates.—(1) In a Metropolitan Area, the Govt. shall, for the purposes of this Code, appoint a Chief Metropolitan Magistrate and such other Metropolitan Magistrates as it may deem fit.

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

(3) The Govt. 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.

Metropolitan Area—This means the area declared under Chittagong Metropolitan Police Ordinance (Ord. No. XLVIII) of 1978 date 18/11/78 Dhaka Metropolitan Police Ordinance (Ord. No. III) of 1976 dated 17-1-76 and Khulna Metropolitan Ordinance No. LII/85 dated 28-10-85 and Rajshahi Metropolitan Act. No. 23/92 dated 17-7-92.

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 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 Govt., 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 purposes of this Code, all Metropolitan Magistrates, 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.

Decision

19 BLD (HCD) 291—Md. Idrisur Rahman Vs. Md. Shahiduddin Ahmed & ors.—From a perusal of the provisions of section 21 of the Code of Criminal Procedure it appears that

the functions performed by C. M. M. Dhaka, are mainly judicial functions and more over he has some administrative works which are incidental to the post and therefore the post of C. M. M. Dhaka, is Magistracy performing judicial functions. [Ref. 4BLC 304]

E.—Justices of the Peace.

22. Justices of the Peace for the mufassal.—The Govt. may, be 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. Repealed.

24. Repealed.

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 jurisdictions.

Decision

32 DLR 91—Haripada Biswas Vs. The State—The Sessions Judge being a Justice of Peace within and for the whole of the territory of Bangladesh under section 25 of the Code, is competent to investigate into any offence committed within his jurisdiction. The authority and powers of the Sessions Judge to hold the impugned inquiry have to be located in the authority and powers of a Sessions Judge as are conferred by law and not in the authority and powers of a justice of Peace.

F.—Suspension and Removal.

26. Repealed.

27. Repealed.

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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 offences under the Penal Code may be tried—

(a) by the High Court Division, or

(b) by the Court of Session, 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.

Jurisdiction—Jurisdiction is conferred by Statute (46 Cr. LJ 339) and so consent of parties, or want of objection cannot give jurisdiction (10 BCR 19 FB).

40 DLR 441—Karim Dad Vs. Abul Hossain—An offence under Section 382 of the Penal Code is triable by Court of Sessions as per Column Eighth of the Schedule. The matter can also be viewed from another angle, Section 28 of the Code of the Criminal Procedure empowers the court of Sessions to try any offence under the Penal Code subject to the other provisions of the Code.

35 DLR 127—Talukder Abdul Aziz Vs. The State—Special Tribunal Constituted under the Special Powers Act not empowered to join together for trial the schedule and non-schedule offences as the same not provided in the Special Powers Act. Joinder of Scheduled non Scheduled offence is an illegality (Ref : 33 DLR 203 and 1 BCR 72).

29. Offence 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.

Decision

43 DLR 137—Kamaluddin Chowdhury Vs. Mashiudowllah & another—Labour Court and a Magistrate, 1st Class, having jurisdiction in the relevant matter shall have concurrent jurisdiction to try an offence punishable under the Industrial Relation Ordinance.

40 DLR 441—Karim Dad Vs. Abul Hossain—Sub-Section (2) of Section 29 provides that offence shown in the eighth column of Second schedule is to be tried by a Court constituted under this Code. From reading the Second Schedule of the Code it appears that column eight vests jurisdiction in the Court of Sessions to try offence punishable under Section 382 of the Penal Code as amended by Act IV of 1980 with effect from 30-11-79. Thus, the offence is now triable by the Court of Sessions.

32 DLR 3 (SC)—Bangladesh Vs. Shahjahan Siraj—The existence of a special law, however, does not mean exclusion of the Code, unless the special law expressly or impliedly provides that certain offences shall be tried exclusively by Courts constituted: The effect of S. 1 (2) in the background of S. 29 of the Code is that where the special law provides for trial of particular offences by particular Courts they shall be so tried exclusively.

29 DLR 145—Md. Sher Ali Miah Vs. Special Tribunal No. IV—Special Tribunal constituted under the Special Powers Act is a Court within the meaning of section 29 (1). Such a Court is to exercise its powers as are specifically conferred under the statute. Special Tribunal is competent to accord consent for withdrawal of a case (5 BLD 278 AD).

18 DLR 230—Abu Sufian Vs. Nurjahan Begum—Magistrate's jurisdiction to try an offence—When the

maximum sentence prescribed exceeds the limit of his power—Sentence impossed by the Magistrate is illegal—Trial is legal.

18 DLR 176 (SC)—Noor Hossain Vs. The State—Trial in respect of the offence is not affected when the Magistrate imposes a sentence within the limits of his power.

29A. Omitted.

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 the 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.

Scope and application—S. 29B of the Cr.P.C is not intended to take away the jurisdiction conferred on Magistrates under section 28 and col. 8 sch. II Cr.P.C. It is intended to extend to certain Magistrates the power to try juvenile offenders for certain offences which would otherwise have been triable exclusively by the Court of Session (AIR 1936 All 675).

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

(a) invest the Chief Metropolitan Megistrate, 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 imprisonment for life or with imprisonment for a term exceeding ten years.

Scope and application—The jurisdiction of every criminal Court to try a particular offence is derived from the statute either from the statute which creates the Court or from the statute which defines the offence (46 Cr. LJ 399 FB). The consent of parties cannot vest jurisdiction in any Court (AIR 1942 Oudh 50). This section is essentially a section conferring jurisdiction. It gives Magistrates power to try offences which otherwise they cannot try. This section is in terms clearly permissive.

In Metropolitan areas, the Chief Metropolitan Magistrate has the same powers as the District Magistrate or Additional District Magistrate has in a District.

41 DLR 395 (FB)—Nurul Huda vs.Bahar Uddin and others—Assistant Sessions Judge deemed to have been appointed as Additional Sessions Judge does not acquire the status of an Additional Sessions Judge. Consequence of change brought in section 29C and section 31 (4) of the Code of Criminal Procedure—An Assistant Sessions Judge deemed to be an Additional Sessions Judge shall not be deemed to be an Additional Sessions Judge for all purposes under the Code, namely, for hearing appeals, revisions, references and reviews if they are made over and transferred to him by Sessions Judge (Ref : 10 BCR 19 FB).

36 DLR 93—Nazir Ahmed Vs. Yonus Miah—By Notification No. ED/FA-52/82-466 dated 8.9.82 the Government invested all Additional District Magistrates with powers to try as Magistrate all offences not punishable with death or, with imprisonment for life or with imprisonment for a term exceeding 10 years. By another Notification No. ED/FA-28/83-120 dated 6.3.83 the Government invested all Additional District Magistrates with powers to try as Magistrate all offences not punishable with death (Ref: 43 DLR 77 AD, 10 BCR 19 FB).

30. Omitted.

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 imprisonment for life or a term exceeding ten years.

(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.

Scope and application—Punishments lie between two limits, upper and lower. The upper limit is fixed by the substantive law defining the offence, while the lower limit by the procedural law defining the powers of the Courts. The Assistant Sessions Judge cannot pass a sentence of death or imprisonment for life or of imprisonment for a term exceeding ten years. These limits cannot be transgressed (AIR 1967 SC 1809). In the case of Appellate Court the limit is that of the powers of the lower Court for the relevant offence. It is a fundamental principle that every Court of Appeal exists for the purpose, where necessary, of doing or causing to be done, that which the Court subordinate to its appellate jurisdiction should have, but has not done or caused to be done and nothing further. The expression means any sentence sanctioned by law and in the exercise of its appellate powers the High Court Division should not award a sentence which is beyond the jurisdiction of the trial Court. The principle is that a Court of Appeal is a "Court of error" and its normal function is to correct the decision appealed from and its jurisdiction should be co-extensive with that of the trial Court. It cannot and ought not to do something which the trial Court was not

competent to do. The power of the appellate Court to pass a sentence must therefore be measured by the power of the Court from whose judgment an appeal has been brought before it.

53 DLR (HCD) 102—A sentence must not be lenient vis-a-vis the nature of the offence committed and at the same time it must be harsh either, or that the offender is sent to a point of no return turning him vindictive to the society.

53 DLR 102—Hussain Muhammad Ershad Vs. State and others (Criminal)—A sentence must not be lenient vis-a-vis the nature of the offence committed and at the same time it must not be harsh either, so that the offender is sent to a point of no return turning him vindictive to the society.

51 DLR 192—Abdur Rouf (Md) Vs. The State—Sentence is essentially a matter of judicial discretion but it must be commensurate with the gravity of the offence.

The appellants have already lost their jobs and they have undergone the sustained spectre of the jail for a pretty long time by which they may be deemed to have purged their sins to a considerable extent and the same may be considered a mitigating circumstance for taking a lenient view in the matter of sentence.

51 DLR 125—Nurul Alam Chowdhury and another Vs. The State—The trial Courts while awarding sentence must bear in mind that the sentence to be imposed upon the accused must be commensurate with the gravity of the offence.

51 DLR (AD) 65—Mov. A. Hye Vs. The State—As a matter of principle, it is not proper that by instalments the question of sentence should be considered once in the High Court Division and again in the Appellate Division.

The learned Single Judge of the High Court Division while disposing of the criminal appeal was in seisin of the case both on fact and law and as such he was competent to reduce the sentence. We do not think that it will be proper in the facts and circumstances of the present case to consider afresh the question of sentence on the ground of old age alone which consideration was there in the High Court Division.

43 DLR 77 (AD)—Abul Kashem and others Vs. The State—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. He shall not be deemed to be an Additional Sessions Judge for all the purposes under the Code, e. g. for hearing appeals, revisions, reference and reviews if they are made over or transferred to him by the Session Judge. Under Sec. 409 the Sessions Judge can transfer the hearing of an appeal only to an Additional Sessions Judge and not to an Assistant Session Judge deemed to have been appointed as an Additional Sessions Judge. The dismissal in the instant appeal by the Asstt. Sessions Judge and refusal of interference by the High Court Division in revision are therefore illegal. The appeal against conviction is therefore allowed and it is directed that the Sessions Judge may himself dispose of the appeal or transfer it to an Additional Sessions Judge for disposal (Ref : 41 DLR 395 FB; 10 BCR 19 FB).

42 DLR 171—Santosh Meah Vs. The State—Questions of sentence to be imposed on the accused after conviction. Sentence increased from two years to five years because of the appellant's being a member of the law-enforcing agency and the heinousness of the crime.

15 DLR 219 (SC)—Md. Rafique Vs. The State—Passing a sentence of death and confirmation of sentence of death is not the same thing. In section 31 of Cr.P.C. sub-section (1) empowers the High Court to pass any sentence authorised by law, and sub-section (2) gives similar power to a Sessions Judge or Additional Sessions Judge adding the condition that "any sentence of death passed by any such Judge shall be subject to confirmation by the High Court." The wording of these two provisions clearly indicate that there is a substantial difference between the passing of a sentence and the confirmation thereof in the eye of the framers of the Code. (Ref : 4 BCR 240).

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 five years including such solitary confinement as is authorised by law;

Fine not exceeding ten thousand take; Whipping.

(b) **Courts of Magistrates of the second class.**—Imprisonment for a term not exceeding three years, including such solitary confinement as is Suthorised by law: Fine not exceeding five thousand taka.

(c) **Courts of Magistrates of the third class.**—Imprisonment for a term not exceeding two years;

Fine not exceeding two thousand taka.

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorised by law to pass.

Scope and application—The enhanced power to the Magistrate gives relief to the Court of Session. A Magistrate of the first class and Metropolitan Magistrate have powers to award sentences of imprisonment for a term which may extend to five years (as against three years previously). In Metropolitan areas. Metropolitan Magistrates have the same powers as Magistrate of the first class has in a district. A Magistrate derives powers directly on his appointment as such there will be no need to confer additional powers by notification. The question of sentence is always difficult and complex. Theory of deterrent punishment should not be loosely put to practice.

Imprisonment and fine—It is inappropriate to add a fine to a substantial term of imprisonment. There is no propriety in the imposition of small fines at the end of substantial terms of imprisonment (AIR 1941 All 225). It is not proper, in the case of a poor cultivator, to add to a very long term of substantive imprisonment and a fine which there is no reasonable prospect of the accused man paying and for default in paying

which he wil have to undergo a yet further term of imprisonment (AIR 1941 All 310). The passing of a short sentence of imprisonment upon a first offender is very often an introduction to a life of crime (AIR 1941 Sind 48). The mere fact that a man has been convicted many times is not in itself a sufficient reason for passing a heavy sentence on him for an offence which is trivial in itself (AIR 1929 Lah 787). Imprisonment till rising of the Court is not illegal but should only be imposed in exceptional cases. [5 BCR 265 (AD)].

41 DLR 87—Jalaluddin Ahmed Chowdhury Vs. The State—The expression "imprisonment" has neither been defined in the Penal Code nor in the Criminal Procedure Code and in the Prevention of Corruption Act. Neither in the Codes nor in the Act we find any indication as to where a sentence of imprisonment is to be served or in other words, where the accused convicted is to be detained, "Imprisonment" the restraint of a person's liberty under the custody of another. It extends in law to confinement not only in goal, but in a house, or stocks, or to holding a man in the street etc, for in all these the person so restrained is said to be a prisoner, so long as he has not his liberty freely to go about his business as at other times." Sentence of imprisonment till rising of the Court is an imprisonment.

21 DLR 46 (WP)—Qasu Vs. The State—Direction to suffer imprisonment in default of payment of fine is not a "sentence" for the offence.

24 BLD 297 (HC)—Aromatic Cosmetics Ltd. Vs. Commissioner, Customs, Excise—A departmental proceedings is not a bar to a criminal proceeding and both are simultaneously maintainable independent to each other. In view of section 37(2) of the Vat Act for Magisterial trial prescribing puishment and sentence thereof independent of each other, the pecuniary jurisdiction of a Magistrate is limited under sections 36 & 32 of the Cr.P.C and not wide enough to award fine to the tune of two and a half time.

33. Power of Magistrates to sentence to imprisonment in default of fine.—(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 :

Provided that—

(a) **Proviso as to certain cases.** 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 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.

Scope and application—This section defines the power of a Magistrate to award imprisonment in default of fine. Sections 63 to 70 of the Penal Code and sections 386 and 387 of the Cr. P.C apply to all fines under the special and normal laws unless a special procedure is provided in them. Section 33 does not authorise the passing of a sentence in default of payment of fine in excess of term prescribed by section 65 of the Penal Code. "Authorised by law" means authorised by all the provisions of law taken together under section 63 to 67, Penal Code. Where the sentence is one of imprisonment and fine, this section should be read with section 65 of the Penal Code; and where the sentence is one of fine only, it should be read with section 60 of the Penal Code. Time should be given for payment of fine, as it will be wholly improper to expect accused persons to anticipate what would be the fine imposed and come to Court furnished with the requisite money (AIR 1958 Mad 458).

37 DLR 91 (AD)—The State Vs. Abul Kashem—The Section governs both the cases where the offence is punishable with imprisonment and fine as well as where the offence is punishable with fine only—Maximum imprisonment in default

of payment of fine is six month simple imprisonment (Ref : 5 BCR 266 (AD), 5 BLD 166).

26 DLR 350—Nizamuddin Meah Vs. The State—In default of payment of fine proper course is to impose simple imprisonment [Ref ; 21 DLR 46 (WP)].

6 DLR 488—Abdul Hakim Bhuiyan vs.Golabdi—The term of imprisonment which can be legally awarded in default of payment of fine is not to exceed one-fourth of the maximum term of imprisonmnt fixed for the offence [Ref : 2 PLD 23 (BJ)].

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

Scope and application—A Magistrate empowered under section 29C must purport to act under that section in order to be able to pass a sentence under this section (AIR 1934 Lah 361). A sentence of seven years imprisonment is the maximum sentence which a Magistrate empowered under section 29C is authorised to pass (AIR 1930 sind 211). The sentence for one offence should not exceed seven years where the accused is sentenced to seven years imprisonment for an offence under section 364 P. C and a further sentence of six months under section 323 P.C and both sentence have to run concurrently. The sentence cannot be held to be illegal (PLD 1962 Kar 588).

Appeal—If a Magistrate acting under section 33A even passes sentences of imprisonment exceeding five years appeals of all or any of the accused convicted at such trial shall lie to the Sessions Judge vide Ordinance No. LXX dated 1.12.84. This section may be read with section 408 Cr. P.C.

34. Omitted.

34A. Omitted.

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 offence, the Court may, subject to the provisions

of section 71 of the Penal Code sentence him, for such offences, to the several punishments prescribed there for a which such Court is competent to inflict; such punishments, when consisting of imprisonment or imprisonment for life 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 that 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.

Scope and application—The normal rule is that the sentences should be consecutive, and they may be made to run concurrently only if there is some reason (52 Cr. LJ 912). The Court must expressly direct whether the sentences are to run concurrently or consecutively (21 CWN 608). The restriction in section 71 Penal Code does not apply when the two offences are not constituted by the whole and the part, but are independent and separate offences. Two or more sentences can be ordered to run concurrenlty only when passed at the same trial but not when trials are separate, (5 BLD 65).

8 BLD 270—Ruhul Amin Vs. The State—Changes in procedural law-Effect of Changes in the adjective a procedural law made in the statute have retrospective effect unless contrary intention is expressed. Trial- when it commences Trial cannot be said to commence unless substance of accusation is stated to the accused-A case becomes a pending case as soon as cognizance is taken-Trial cannot be said to be pending unless it has commenced and it cannot commence unless a charge is framed.

7 DLR 184 (FC)—Rafiquddin vs.The Crown—In the absence of evidence to prove that stolen articles where received by the accused at different times. Three separate convictions and sentences cannot be legally sustained (Ref: 9 PLD 801 Karachi).

Appeal—An accused who has been sentenced to concurrent sentences of imprisonment no one of which individually appealable, has no right to aggregate them and appeal againsts them collectively (19 Cr. LJ. 90; 15 CWN 734). 30 (Thirty) years is the maximum term of imprisonment which can be awarded as an aggregate sentence.

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

35A. Deduction of imprisonment in cases where convicts may have been in custody.—(1) Except in the case of an offence punishment only with death, when any court finds an accused guilty of an offence and, upon conviction, sentences such accused to any term of imprisonment, simple or rigorous, it shall deduct from the sentence of imprisonment, the total period the accused may have been in custody in the meantime, in connection with that offence.

(2) If the total period of custody prior to conviction referred to in sub-section (1) is longer than the period of imprisonment

to which the accused is sentenced, the accused shall be deemed to have served out the sentence of imprisonment and shall be released at once, if in custody, unless required to be detained in connection with any other offence; and if the accused is also sentenced to pay any fine in addition to such sentence, the fine shall stand remitted.[1]

DECISIONS

20 BLD (HC) 177—Habibur Rahman Alias Raju Vs. The State—The proviso of the section provides that deduction from the sentence cannot be allowed when minimum period of sentence as provided in the law. [Ref. 8. BLT (HCD) 119].

7 BLC (HC) 162—Habibur Rahman Vs. State (Criminal)—Reduction from the sentence awarded for the period an accused had remained in custody before conviction cannot be allowed when minimum punishment has been imposed.

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".

Scope and application—Section 28, read with column 8 of Sch. II of the Code, defines the powers vested in each class of Magistrates to try particular offences. The power to issue a search warrant under section 96 Cr. P. C is one of the ordinary powers of any Magistrate (13 Cr. LJ 693 PC). The power to entertain complaints is not one of the ordinary powers of a first, second or third class Magistrate, but may be conferred as an additional power under section 37. Since the Sub-division has been abolished, this section should have been amended by substituting the word Thana Magistrate in place of Subdivisional Magistrate.

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1. Substituted by Act No. 19 of 2003.

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.

Scope and application—This section deals with conferment of ordinary powers on Magistrates, When such powers are conferred on any Magistrate, they remain personal to him and independent of the local area where he may be exercising them until withdrawn by the authority conferring the powers (33 Cr. LJ 68). Under this section the Government has power to invest a Sub-Divisional Magistrate with all or any of the additional powers specified in the Fourth Schedule. This section should have been amended by substituting the word Thana Magistrate in place of Sub-divisional 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.

Scope and application—Power may be conferred "generally" or "specially." It is "general" when it is conferred on a class of officials by their official title. Where a notification empowers the Magistrates mentioned in the list attached to the notification to try certain cases, such Magistrates are

specially empowered (24 Cr. LJ 846). Powers for trial cannot be conferred with retrospective effect. A notification cannot grant criminal powers retrospectively. The notification takes effect from the date on which it is communicated to the person empowered (AIR 1933 Pesh 97). Where a Magistrate of the second class begins a trial in that capacity and, previous to his passing the sentence, is empowered as a first class Magistrate, he can inflict a sentence in the latter capacity (7 All 414 FB).

40. Powers of officers appointed.—Whenever any person holding an office in the service of Government who has been invested 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.

Scope and application—According to the provisions of this section, whenever any Government servant invested with any powers under the Code in any local area is appointed to an equal or higher office of the same nature in like area, the powers continue (2 Cr. LJ 721). This section appears to contemplate that a person may have two sets of powers. When a Subordinate Judge, first invested with the powers of a Magistrate of the first class, is latter invested with the higher powers of an Additional District and Sessions Judge, the powers of the first class Magistrate continue till they are withdrawn. Where during a trial the Magistrate is transferred to another district, he cannot continue the trial. The Magistrate powers conferred on an officer are kept alive under this section, even though he is absent on leave.

41. Powers may be cancelled.—(1) The Government may withdraw all or any of the powers 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.

Scope and application—The Section 2 (a) may be read with Section 53A and 57 of the Penal Code. By amendment of these two sections the fourteen years punishment has been enhanced and imprisonment for life has been accepted as being of thirty years duration in view of the provision of Section 57 Penal Code. Where the Government does not wish to release a life convict, it shall be assumed that the prisoner has to under go an aggregate imprisonment of 25 (Twenty five years). The withdrawal can be brought to the notice of the Magistrate either by sending a copy of the withdrawal order to him or by publishing it in the official Gazette. Powers conferred by the Government may be withdrawn by the Government alone while powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

8 BLD 361—Yusuf Ali Vs. The State—Enhancement of sentence-Competence of the Appellate Court to enhance- The appellate Court has no jurisdiction to enhance the sentence without serving notice upon the petitioner.

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PART III

GENERAL PROVISIONS

CHAPTER—IV

OF AID AND INFORMATION TO THE MAGISTRATE, 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 breah of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

Scope and Application—It is not intended that the public should be called upon to do duties for which the police is paid. Refusal to assist under this section is punishable under section 187 Penal Code.

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.

Scope and application—This section is confined to a private person who for the time being is discharging the function of a police-officer.

44. Public to 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 given information to the nearest Magistrate or police-officer of such commission or intention.

(2) For the purpose 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.

Scope and Application—The provisions of this section have been designedly made so that crimes are brought to book and not suppressed by persons knowing about them. The authorities should make some use of the aforesaid provisions so that the object of the Legislature in enacting the provisions, is not lost completely. There is no obligation under this section to give information of the offences not specified in the section. Offence committed out of Bangladesh are included. When information has once reached the police from others or from any source, the duty ceases. Omission to give information under this section is punishable under sections 118, 176 and 202 of the Penal Code.

19 BLD (AD) 284—Md. Shafique Miah Vs. The State—Public to give information of certain offences—Section 44 of the Code of Criminal Procedure imposes a legal duty upon every person aware of the commission or of the intention of any other person to commit any of the offences specified therein to give information thereof forthwith to the nearest Magistrate or Police Officer.

45. Village-headmen, accountants, land-holders 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 occured 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) **XLV of 1860.** the commisson of, or intention to commit, at any place out 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, 293, 394, 395, 396, 397, 398, 399, 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 any 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.

(3) **Appointment of village headman by District Magistrate or sub-divisional Magistrate in certain cases for purposes of this section.**—Subject to rules in this behelf 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.

Scope and application—The persons enumerated in sub-section (1) are bound to give information specified under this section. Information does not mean a person's belief or opinion. It must be definite knowledge at first hand. A mere rumour of an occurrence in a village is not "information" within the meaning of this section. The object of this section is that the earliest information should be communicated by those who are in the best position to obtain the same. Where a person is prosecuted for failure to give information of an offence, the prosecution has also to prove that the specified offence was committed, that the accused had knowledge of it, and that he intentionally failed to give information. Omission to give information under this section is punishable under section 176 Penal Code. Now the district Magistrate is exercising all the powers of Sub-divisional Magistrate.

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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.

(2) **Resisting endeavour to arrest.** If such person forcibly resists the endeavour 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.

Scope and application—This section may be read with section 50 Cr. P.C. In making an arrest no more force is to be used than is necessary. It is by no means necessary that the arresting officer should, in effecting the arrest, immediately proceed to hand-cuff the accused person. Hand-cuffs are used as a means of restraint, Resistance or illegal obstruction to a lawful arrest may amount to an offence under section 224 of the Penal Code (30 Cr. LJ 25).

6 DLR 157 (WP)—Md. Ishaq Vs. The Crown—Under sub-section (2) of section 46, a person entitled to arrest can use all means in his power to arrest the culprit. This would include the employment of other persons to effect the arrest.

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 :

Breaking open Zanana. Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, 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 into 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 subjected to more restraint that 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.

17 DLR 141 (WP)—Sanwan Vs. The State—Issue of notice to surety without first forfeiting his bond is irregular.

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.—Arrest 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 heaving 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;

eighthly, any released convict committing a breach of any rule made under section 565, 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.

(2) Omitted.

Scope and application—The object of this section is to give widest powers to the police in cognizable cases and the only limitation is the necessary requirement of reasonability and credibility to prevent the misuse of the powers. The words "may arrest" show that the power of arrest is discretionary. The powers under this section must be cautiously used. By virtue of his office, a police officer may arrest a person under this section on reasonable suspicion (PLD 1966 SC 432). But it was not at all the intention of the law giver that the police-officer should at his own sweet will arrest anybody he likes, although he may be a peace loving citizen of the country. 'Reasonable suspicion' means a bonafide belief on the part of the police-officer that an offence has been committed or is about to be committed (AIR 1943 Mad 218).

56 DLR 355—The State Vs. Billal Hossain Gazi— FIR—It can be used for the purpose of testing the truch of the

prosecution story and the Court may note any departure therefrom.

56 DLR 324—Saifuzzaman (Md) Vs. State—The "reasonable suspicion" and "credible information" must relate to definite averments considered by the police officer himself before arresting a person under this provision. What is a "reasonable suspicion" must depend upon the circumstances of each particular case, but it should be at least founded on some definite fact tending to throw suspicion on the person arrested and not on a mere vague surmise.

55 DLR 363 (HC)— Bangladesh Legal Aid and Services Trust (BLAST) and others Vs. Bangladesh and Others—If a person is arrested on reasonable suspicion, "the police officer must record the reasons on which his suspicion is based. If the police officer justifies the arrest only by saying that the person is suspected to be involved in a cognizable offence, such general statement cannot justify the arrest. [Ref: 23 BLD 115 (HC)].

55 DLR 363 (HC)—Bangladesh Legal Aid and Services Trust (BLAST) and others Vs. Bangladesh and Others—The word "concerned" used in the section is a vague word which gives untsindered power to a police officer to arrest any person stating that the person arrested by him is 'concerned' in a cognizable offence.

52 DLR 526 (HC) —Mehnaz Sakib Vs. Bangladesh—Since the detenu was arrested under section 54 of the Code it was incumbent upon the police to produce her before a Magistrate within 24 hours but the police having not done so the right guaranted to her under of the Constitution has been violated.

29 DLR 256 (SC) at 258-Abdur Rahman Vs. The State-When a person is concerned in a cognizable offence the police can arrest him without warrant under section 54 of the Code (Ref : 40 DLR 318, 11 DLR 131 WP).

22 BLD (HC) 231—Alhaj Md. Yusuf Ali Vs. The State—Reasonable suspicion in exercising power under this section means a bonafide belief on the part of the police officer that an

offence has already been committed or is about to be committed.

8 BLC 74 (HC)—Yousuf Ali/Md.Vs. The State—Section 54 and 167—Reasonable suspicion in exercising power under this section means a bonafied belief on the part of the police officer that an offence has already been committed or is about to be committed, and certainly not a move to go on a wild goose hunting. This appears to be a case demonstrating glaring misuse of the powers exercised under section 54 Cr.P.C depriving the petitioner of his freedon over a considerable period of time. Repeated orders of remand just on the seeking of the police, in the absence of any compelling reason, is never contemplate in law.

7 BLC (HC) 219—Dr. Mohiuddin Khan Alamgir Vs. State (Criminal)—Sections 54, 61, 167, 344, and 561A—The Magistrate has committed no illegality nor has he acted in excess of his jurisdiction by allowing police remand for 2(two) days before the formal recording or registration of a case as canvassed by the learned Counsel for the petitioner and hence the order of remand cannot be said to be without lawful authority as argued by the Counsel of the petitioner and hence there is no substance in this application for quashing the order of remand.

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 rober, 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.

(2) Omitted·

Scope and application—This section was intended for the suppression of habitual bad characters whom an officer in charge of a police-station suddenly finds within his jurisdiction or about whom he has good cause to fear that he will commit serious harm, before there is time to apply to the nearest Magistrate empowered to deal with the case under section 112.

7 DLR 361—Navas Vs. The Crown—Immunity from arrest cannot be claimed only because a proceeding under section 110 Cr. P. C is contemplated (Ref : 27 Cr. LJ 628).

56. Procedure when police-officer deputes 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.

(2) Omitted.

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 or 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.

Scope and Application—This section applies to a person (a) who commits a non-cognizable offence in the presence of a police-officer, or (b) is accused before him of having committed such an offence. Arrest is permissible only if he refuses to give name and address and as soon as they are ascertained he is to be released on execution of a bond for appearance.

58. Pursuit of offenders into other jurisdictions.—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.

Scope and application—A private individual may arrest a person only when he is a proclaimed offender or he in his view,

commits a non-bailable and congnizable offence, or attempts to commit an offence where such attempt is itself an offence and is made in the view of the person arresting (AIR 1934 Cal. 610). Where the accused is being lawfully pursued by persons in whose view he has committed a murder, he has no right of private defence against his pursuers who seek to arrest him even when he apprehends that after arresting him they will cause him grievous hurt (PLD 1980 Kar. 199). The intention of this section is to prevent arrest by a private person on mere suspicion or information and the power of arrest by such person is restricted only to non-bailable and cognizable offences committed in his presence, and to a proclaimed offender. The words 'in his view' mean 'in his presence' and not 'in his opinion'.

22 DLR 19 (SC)—Sultan Ahmed Vs. The State—Persons actually witnessing commission of cognizable and non-bailable offence and also persons who come to their assistance on hearing their outcry for help can apprehend offenders-Expression 'In his view' occurring in section 59 explained. (Ref: 5 PLD 207 lah).

18 DLR 299 (SC)—State Vs. Md. Akber—The words 'in his view' in their natural and proper meaning connote things actually seen. These words cannot be extended to cover a case where action is taken on the basis of a reasonable ground that a person has committed a non-bailable and cognizable offence. The words 'in his view' are intended to be restrictive in their effect, that is, of confining the action of a private citizen in relation to things actually seen by him (Ref : 6 DLR 157 WP; 11 DLR 131 WP).

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.

Scope and application—The arrested person must be produced before a Magistrate having jurisdiction to try the case. The period of twenty four hours is the maximum limit.

29 DLR 256 (SC)—Abdur Rahman Vs. The State—Sec. 60 provides that a police-officer marking an arrest without any warrant shall, without unnecessary delay and subject to the provisions of bail, take or send 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.

Scope and application—Under no circumstances accused can be detained, without the special order of a Magistrate under section 167, for more than twenty four hours. The detention mentioned in this section means continuous detention. When the 24 hours detention and the additional time necessary to bring an accused before a Magistrate allowed by his section and the 15 days additional detention allowed by S. 167 expire, an accused must either be released by the police under section 169, security being teken for his appearance before a Magistrate, if and when required, or the accused must, under the provision of S. 170, be forwarded under custody to a Magistrate who is empowered to take cognizance of the offence upon a police report.

54 DLR (HC) 80—Belal alias Bellal and 2 others Vs. State (Criminal)—Sections 61 & 167—There is no evidence that the appellants were detained in police custody under an order of remand of any Magistrate and hence their such custody beyond 24 hours is unauthorised.

53 DLR (HCD) 169—Since some incrimination articles were recovered within 24 hours of the arrest the High Court did not find any warmful effect of the illegal delintion in violation of section 61 & 167 of the code on the confession made by the accused.

49 DLR 47—Faruque Mahajan and 4 (four) others Vs. The State—An accused cannot be detained in custody of the police for a longer period than under all the circumstances of the case is reasonable and such period must not, without an order of remand by a Magistrate, exceed 24 hours, exclusive of the time necessary for the journey from the place of arrest to the court of the Magistrate.

29 DLR 256 (SC)—Abdur Rahman Vs. The State—Production of the accused before Magistrate does not amount to taking cognizance of any offence by him. Under section 61 it is provided that no police-officer shall detain in custody 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 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate Court (Ref : 7 BCR 325).

17 BLD (AD) 15—Faruk Mahajan and ors. Vs. The State—From a combined reading of sections 61 and 167 of the Code it is clear that an accused cannot be detained in police custody for more than 24 hours without an order of remand by a Magistrate. In passing an order of detention touching the liberty of a person the Magistrate must apply his judicial mind for deciding as to whether the circumstances of the case really call for a detention in police custody.

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 districts, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective station, 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 discharged 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.

Scope and application—This section will apply only where the Magistrate sees something which prima facie at the time appears to him to be an offence. It does not apply to a case where at the time he did not know at all that an offence was being committed but subsequently, on evidence which he examined, he came to the conclusion that what had been done in his presence was an offence.

12 DLR 78 (WP)—Khan Golam Qudir Khan Vs. A. K. Khalid—Section 64 will apply only where the Magistrate sees something which prima facie, at the time appears to him to be an offence. It does not apply to a case where at the time he did not know at all that an offence was being committed but subsequently on evidence which he examined he came to the conclusion that what had been done in his presence was an offence (Ref : 14 DLR 25 WP).

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.

Scope and Application—A Magistrate may arrest a person when a police-officer could arrest under section 54 (AIR 1951 SC 207).

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.

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