PART VI

PROCEEDINGS IN PROSECUTIONS

CHAPTER—XV

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial

177. Ordinary place of inquiry and trial.—Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Scope and application—This Chapter deals with the place of inquiry and trial in respect of offences only. An application under section 488 Cr. P.C. for maintenance is not a complaint of an offence, and the provisions of this section are not applicable to determine the jurisdiction of a court competent to entertain such application. This principle is found enacted in section 2 of the Penal Code which declares that every person shall be liable to punishment under the Code for every act or omission contrary to the provisions thereof of which he shall be guilty within Bangladesh (AIR 1930 Bom. 490 FB). This section applies to the determination of the appellate forum also. This section has reference to the court and not to the place of sitting. Crime is purely local. An objection to jurisdiction must be raised at the earliest opportunity or at any time when the accused can satisfy the court on evidence which has come upto that time that the court has no jurisdiction and if the court is satisfied it should not take further proceedings (AIR 1956 All 619). A point of jurisdiction can be raised at any stage.

Revision—Revision lies to the Sessions Judge under section 435/439 A Cr. P.C. against the order of the Magistrate.

1 BSCD 153—Mr. Musharraf Hussain Vs. The State—The law that existed at the time the offences were committed will determine the forum and not the law which was enacted later with no retrospective effect. Further, the law existing at the commencement of the action will govern the case unless the

new law is expressly or by necessary implication given a retros pective effect.

34 DLR 315—Vichen Chaipern Vs. Bangladesh—'Bangladesh Customs Water'—What this clause implies. The question for adjudication in this case is whether the seizure of the trawler took place within the territorial waters of Bangladesh. The customs extends to the whole of Bangladesh. Customs Waters as defined in clause (P) of section 2 of the Customs Act which provides that Bangladesh Customs Waters means the waters extending into the sea to the distance of 12 nautical miles measured from the appropriate base line on the coasts of Bangladesh. Seizure of the Trawler-seizure report and the Govt. do not say whether the 16 miles West of Cox's Bazar is covered by the coast line of Bangladesh-Presumption is seizure took place outside the territorial waters of Bangladesh. Territorial Waters & Maritime Zones Act (26 of 1974)—whether the seizure has been within the contiguous Zone of Bangladesh-Seizure took place within the contiguous zone as provided in section 4 (1) of Act 26 of 1974. The next question will be if the seizure had not taken place within the territorial waters of Bangladesh it has evidently place within the contiguous zone of Bangladesh as contemplated under section 4 of Act 26 of 1974 (Territorial Waters and Maritime Zones Act) Sub-section (1) of section 4 of Act 26 of 1974 provides that the zone of the High seas contiguous to the territorial waters and extending to seaward upto 6 nautical miles measured from the outer limits of territorial waters is declared to be the contiguous zone of Bangladesh. That means that 6 nautical miles added to 12 nautical miles amounting to 18 nautical miles in all constitute the limit of the contiguous zone of Bangaldesh. If it is accepted that the seizure took place within 16 miles from the West of Cox's Bazar, then it must be presumed that such seizure took place in the contiguous zone as provided under sub-section (1) of section 4 of Act 26 of 1974.

Under Section 4 (2) the Government may provide for punishment for contravention of any customs law in contiguous zone—It is not established that any punishment

has been prescribed by the Government. Therefore, seizure of the trawler in this case is not lawful. Since the Customs Act does not extend beyond the territorial waters of Bangladesh, sub-section (2) of section 4 of the Act 26 of 1974 merely empowers the Government to make persons liable for contravention or for attempt to contravene any customs law in the contiguous zone, when such customs offence has taken place within the territorial waters. There is nothing on record to show that the Government actually exercised such powers and took such measures by way of any specific rules or regulations made under the Act. In that view of the matter it can not be said that the Customs Department had any lawful authority to seize the trawler in the high seas within 16 miles from the west of Cox's Bazar even though the same be well within the contiguous zone of Bangladesh. People of Bangladesh can fish in economic zone in ordinary boats. No punishment has been prescribed by the Government for violation of the right of Bangladesh in economic zone. Severeignty of Bangladesh does not extend to the economic zone-Punishment not provided for violation of the Republic's right of such economic zone. It is doubtful whether the State can at all punish a foreign offender for causing an alleged violation of any law in a territory over which the sovereignty of the state has not been specifically extended. 16 miles west of Cox's Bazar from 12 miles beyond is territorial waters of Bangladesh. In the absence of any specific statement, it must be assumed that 16 miles from the west of Cox's Bazar being evidently beyond 12 miles, was outside the territorial waters of Bangladesh.

32 DLR 194 (AD)—Bangladesh Vs. Somboon Asavaham—International law and Municipal Law. It is well settled that where there is municipal law on an international subject, the national Court's function is to enforce the Municipal Law within the plain meaning of the statute. Bangladesh Territorial Waters & Maritime Zone Act (XXVI of 1974)—Government issued notification defining territorial waters and economic zone of Bangladesh—and it is not Court's function to decide what should be the limits of Bangladesh territorial

water—Fixing of baseline for determination of the territorial waters is a technical matter requiring expert knowledge. The learned Judges were in error in applying the common sense view on such a highly technical question by giving a glance on the map of Bangladesh totally ignoring the that fixing of baseline for determination of the territorial waters is a technical matter, which is done by persons having expert knowledge. Government is to determine the appropriate baseline—Measurement of 12 nautical miles from the baseline as provided in the Customs Act, is not the function of the Court but the Government and the legislature. The three trawlers were seized within the "territorial waters" of Bangladesh which is conterminus with the "Customs waters" and hence their seizure was with jurisdiction. There is no conflict between the 'territorial waters' as defined by the notification under the Territorial Waters and Maritime Zones Act, 1974 and the "Customs Waters" as defined under the Customs Act, 1969. They were captured not within the "Economic Zone" but within the 'territorial waters" of Bangladesh which is co-terminus with the "Customs waters' and hence the Customs Authorities had full jurisdiction over the three offending Thai trawlers and those came within the mischief of the penal sections of the Customs Act. The actions taken by the Customs Authorities were done with jurisdiction and in accordance with law and no interference is called for (Ref : 31 DLR 256).

20 DLR 503—Jamshed Ali Vs. Shahabuddin—Place of trial in jail—Prior notice to be given to such place for trial of the case.

18 DLR 230—Abu Sufian Vs. Nurjahan Begum—Magistrate trying a case is not within his territorial jurisdiction. Trial is illegal.

178. Powers to order cases to be tried in different sessions divisions.—Notwithstanding anything contained in section 177, the government may direct that any cases or class of cases sent for trial in any district may be tried in any sessions division.

179. Accused triable in district where act is done or where consequence ensues.—When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

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(a) A is wounded within the local limits of the jurisdiction of Court X. and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X. and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y, or Court Z, to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried by X or Y.

(d) A is wounded in Dhaka, and dies of his wounds in Chittagong. The offence of causing A's death may be inquired into and tried in Chittagong.

Scope and application—Section 179 is controlled by section 131 (2). This section has no application to the offence of criminal breach of trust which is governed by section 181 (2) Cr. P. C (29 CWN 432, AIR 1940 Cal. 367). The offence of cheating may be tried at the place were the loss ensued the complainant (32 Cr. LJ 924). For application of this section the consequence should form part of the offence and the act and consequence together must constitute the offence (1980 P. Cr. LJ 594).

42 DLR 238—Sree Jagenath Chandra Bakshi Vs. State—Criminal trial—Interpretation of the provisions of section 179 of the Code of Criminal Procedure—Territorial jurisdiction of the Criminal Court—Offence of forgery took place in Noakhali but trial being held in Comilla—Accused petitioners raised objection to the jurisdiction of Criminal Court in Comilla—Whether trial at Comilla permissible—Both the Courts have got jurisdiction to try the offence.

17 BLD (HC) 291—Anowara Begum Vs. Most. Sultana Jeshmin Khan (Shoapa) and State— From the FIR it prima facie shows that the occurrence took place in Dhaka and then it continued and culminated in Sylhet and in such circumstances the Tribunal at Sylhet has not committed any illegality in taking cognizance of the offence and framing charge. [Ref ; 2 BLC (AD) 241]

19 BLD (HC) 217—Abdus Sattar Vs. The State and another—Although the stamp and other papers were signed by the complainant in Jeddah but as by using the same in Bangladesh the offence alleged to have been committed in Bangladesh is the consequence of such procurement of signature in Jeddah and as such it comes within the purview of illustration (c) of section 179 of the Code and accordingly the Court before which the instant case is pending has got the jurisdiction to try the case. [Ref. 50 DLR (AD) 187].

180. Place of trial where act is offence by reason of relation to other offence.—When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

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(a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court, within the local limits of whose jurisdiction any of them were any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping took place.

181. Being a thug or belonging to a gang of dacoits, escape from custody etc.—(1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

(2) **Criminal misappropriation and criminal breach of trust.** The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

(3) **Theft.** The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

(4) **Kidnapping and abduction.** The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

Scope and application—Section 181 (3) means that the offence of being in possession of stolen property may be

inquired into either at the place where it was stolen or where it was found to be dishonestly possessed.

12 DLR 546—Sarbeswar Kundu Vs. Rakhal Chandra Saha—Jurisdiction as regards place of trial of the court to try criminal breach of trust.

182. Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts.—When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another , or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas.

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Scope and application—This section applies to cases where there is doubt that the occurrence in question took place in a particular locality, but it is uncertain X is in district of Y or Z (AIR 1926 Cal 204). In order to attract the provisions of section 182, it would be necessary for the prosecution to prove that the offence was committed in one or the other local area of which it was uncertain (AIR 1957 (SC) 196). Where cheating is done by post, the court, at the places where the subject-matter through which cheating is done is posted as well as the place where it is received, has jurisdiction to try the offence. The offence of kidnapping from lawful guardianship is not a continuing offence. As soon as the minor is actually removed out of the custody of her guardian, the offence is completed. The offence of abduction is a continuing one. Enticing and detaining a married woman is a continuing offence.

183. Offence committed on a journey.—An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the

offender, or the person against whom, or the thing in respect of which, the offence was committed, passed, in the course of that journey or voyage.

Scope and application—Under this section if a person is accused before a court of an offence committed during a journey or voyage, he may be tried by that court if any part of that journey or voyage during which offence was committed is within the local limits of the court's jurisdiction and the court competent to try the case of an offender in respect of an offence committed on a journey are the courts through or into the local limits of whose jurisdiction the offender in the course of journey passed at the time of the offence was committed (2 Cr. LJ 411).

184. Repealed.

185. High Court Division to decide, in case of doubt district where inquiry or trial shall take place.—(1) Whenever a question arises as to which of two or more Courts subordinate to High Court Division ought to inquire into or try any offence, it shall be decided by the High Court Division.

(2) Omitted.

186. Power to issue summons or warrant for offence committed beyond local jurisdiction.—(1) When a Metropolitan Magistrate, District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without) Bangladesh an offence which cannot, under the provisions of section 177 to 183 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in Bangladesh, such Magistrate may inquire into the offence as if it had been committed within such local limits and compel such person in manner hereinbefore provided to appear before him, and send such

person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

(2) **Magistrate's procedure on arrest.** When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court Division.

Scope and application—In order that this section may apply, the Magistrate must have reason to believe that an offence has been committed outside the local limits of his jurisdiction whether within or without Bangladesh (25 Cr. LJ 184). The powers conferred by this section are conferred only on certain specified Magistrate and not on all Magistrates.

187. Procedure where warrant issued by subordinate Magistrate.—(1) If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Metropolitan Magistrate or District Magistrate, such Magistrates shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186 such Magistrate shall send such person to such Court.

188. Liability for offence committed outside Bangladesh.—When a citizen of Bangladesh commits an offence at any place without and beyond the limits of Bangladesh. or,

when any person commits an offence on any ship or aircraft registered in Bangladesh wherever it may be,

he may be dealt with in respect of such offence as if it had been commited at any place within Bangladesh at which he may be found;

Political Agents to certify fitness of inquiry into charge. Provided that notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be inquired into in Bangladesh except with the sanction of the Government:

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in Bangladesh shall be a bar to further proceedings against him under the Extradition Act, 1974, in respect of the same offence in any territory beyond the limits of Bangladesh.

Scope and application—This section provides for the extra-territorial jurisdiction of the courts in Bangladesh in certain cases. It deals with procedure only and has its counterparts so far as the substantive law is concerned, in section 4 of the Penal Code (AIR 1950 Mad 22). Under that section and this section the courts in Bangladesh are empowered to deal with offence alleged to be committed outside Bangladesh as if they were committed at any place in Bangladesh at which the accused may be found (52 Cr. LJ 561). This section imposes as a condition for and inquiry of an offence under it that the certificate of the Political Agent for the area in which the offence was committed or where there is no Political Agent, the sanction of the Government should be obtained. The object of such a provision is to prevent the accused being tried over again for the same offence in two different places (AIR 1934 Sind 96).

34 DLR 390—M.G. Towab. Air Vice Marshal (Rtd.) Vs. The State—Offence committed outside Bangladesh—Court in Bangladesh has jurisdiction to try the accused.

48 DLR 280—Dr.Taslima Nasir Vs.Md Nurul Alam & anothers—The alleged offence having been committed in India,

the trial of the case in question cannot be proceeded with without sanction of the Government for the purpose in view of the proviso to section 188 of the Criminal Procedure Code and sanction obtained in his case under section 196 of the Code cannot do away with the requirement of proviso to section 188.

This sanction, however, can be accorded by the Government even after cognizance has been taken of the case if it is found desirable. Since the cognizance of the case has been taken upon a petition by an order of the Government in accordance with section 196 of the Code of Criminal Procedure the complaint case itself need not be quashed. In this view of ours we are fortified by the decision in the case of Ranjit Vs. Sm Parul Hore and another, reported in 1980. Cr. LJ Noc 57 (Cal); (1979) 1 Cal HN 414.

52 DLR (HC) 379—Abdul Ahad @ Md Abdul Ahad Vs. State— It was obligatory on the part of the Magistrate to make a written complaint about the nature of the order made by him which was alleged to have been disobeyed and the manner of violation in order to form an opinion that accused person have committed an offence punishable under section 188 Penal Code.

189. Power to direct copies of depositions and exhibits to be received in evidence.—Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Government may if it thinks fit direct that copies of depositions made or exhibits produced before a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

B.—Conditions requisite for initiation of proceedings.

190. Cognizance of offences by Magistrates.—(1) Except as hereinafter provided, any Metropolitan Magistrate, District Magistrate or Sub-divisional Magistrate, and any other

Magistrate specially empowered in this behalf, may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police-officer;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Government, or the District Magistrate subject to the general or special orders of the Government, may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or send for trial.

(3) The Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or send for trial.

Scope and application—This section is one out of a group of sections named 'conditions requisite for initiation of proceedings.' Clauses (a), (b) and (c) of section 190 (1) are conditions requisite for taking cognizance. The expression 'taking cognizance of an offence' has not been defined in the Code. In its broad and literal sense, it means 'taking notice of an offence' and would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purpose (52 Cr. LJ 1376). In the case of a cognizable offence, the Magistrate takes cognizance when the police have completed their investigation and come to the Magistrate for the issue of a process. The word 'cognizance' is used in the Code to indicate the point when a Magistrate or a Judge first takes judicial notice of an offence. It is a different thing from the initiation of proceedings, rather it is the condition precedent to the initiation of proceedings by the Magistrate. Cognizance is taken of cases and not of persons, and there seems to be nothing in theory to prevent a Magistrate from taking

cognizance of a case even when the offenders are unknown. The fact that a Magistrate has taken cognizance does not necessarily mean that there will be judicial proceedings against anyone. Section 200 seems to regard the taking of congnizance as something prior even to the examination of the complainant upon oath. Regarding complaint cases, it is clear from the wordings of the Code that it is only when the stage is reached of an order under section 204, i, e; for the issue of process that proceedings before the Magistrate can be said to commence, for section 204 is the first section in the Chapter headed 'Commencement of proceedings before Magistrate.' Similarly, cognizance is taken upon a police report, the Code seems to contemplate that it shall be taken upon the preliminary report which is sent up by the police with the first information. Proceedings commence only when the accused is made a party before the court (AIR 1943 Pat 245).

Complaint and information--'Information' is the genus of which 'complaint' is a species. In section 190 (1) (c), however, the word 'information' must be construed as referring to information which is not a valid complaint, it does not cease to be an information and, therefore, can be treated as such under cl. (c) it is open to the Magistrate to treat it as an information under clause (c) subject of course to the initiation imposed by section 191 in this behalf (32 Cr. LJ 124). The essential difference between a complaint and an information is that a Magistrate acts on a complaint because the complainant has asked him to act, but a Magistrate acts on information on his own initiative. In the case of receiving information, Magistrate is not asked by any one to issue process, and if he does not choose to act on the information, he need not record any reason or pass any order. In the case of information, there is no complainant to examine on oath, as in the case of a complaint (32 Cr. LJ 306).

Who can take cognizance—Having regard to section 190 (1) Cr. P. C only the Metropolitan Magistrate, District Magistrate or Sub-divisional Magistrate has statutory powers to take cognizance of an offence. In all other cases the

Magistrate has to be specially empowered in this behalf (1969 P. Cr. LJ 630). A first class Magistrate is empowered to take cognizance of any case in the entire district irrespective of the allocation of work under section 17 unless his jurisdiction is curtailed or confined to a defined area under section 12. The District Magistrate is a first class Magistrate for the entire district. Consequently he has concurrent jurisdiction with the local Magistrate (PLD 1976 Lah 863; 20 DLR 1002). Proceedings initiated by a Magistrate who is not duly empowered to take cognizance under this section are liable to set aside. Jurisdiction of the Magistrate to take cognizance must exist independently. It cannot be maintained that a vaild and legal police report is the foundation of the jurisdiction of the court to take cognizance (1980 P. Cr. LJ 97). If the Magistrate has taken cognizance under cl. (c) without having the power to do so, his proceedings are void (1971 P. Cr. LJ 752).

46 DLR 140—Golam Moula Master Vs. State—Non cognizable offence—Mere irregularity like investigation by an officer not authorised to investigate a non-cognizable offence does not affect the legality of a proceeding of a court below.

43 DLR 279—Abdur Rashid Vs. State—Cognizance of offence by Magistrate—The Magistrate has got wide power under section 190 (1) (c) Cr. P. C to take cognizance of any offence even upon his knowledge or suspicion that an offence has been committed and to pass, in the present case, the impugned order sending the case for judicial enquiry after rejecting the police report and then taking cognizance after receipt of the enquiry report.

42 DLR 240—Syed Ahmed Vs. Habibur Rahman—Refusal to take cognizance against some of the accused persons amounts to dismissal of the complaint as against them and application filed before the learned District Judge by the complainant is maintainable. Magistrate's power of taking cognizance under section 190 (1) in all cases, including those exclusively triable by a Court of Sessions, has remained unaffected by the repeal of the provision for committing the accused to the Court of Sessions.

41 DLR 306—Aroj Ali Sarder Vs. The State—The court can, in a given case, regard the police report as a report under section 190 (1) (b) Cr P. C and take cognizance on that Police Report. A Police officer is not to investigate into a non-cognizable case under section 155 Cr. P. C without the order of a Magistrate of the first or second class. Under the law when the police has a report of a non-cognizable offence he is bound to refer the informant to the Magistrate for initiating the process of investigation. Offence under section 290 of the Penal Code being a non-cognizable one, the proceeding initiated on police report without the permission of the Magistrate as required under section 155 (2) Cr. P. C is illegal (Ref : 6 BLD 139).

40 DLR 509—Quamruzzaman Vs. The State—Direction to the Thana Magistrate to take cognizance. Sessions Judge left nothing for the learned Magistrate to do except taking cognizance. Sessions Judge acted illegally in directing the Thana Magistrate to take cognizance of the offence.

40 DLR 226 (AD)—Abdul Hai Khan Vs. The State—Provisions in section 195 like the provisions in sections 196—198 Cr. P. C are exceptions to the general and ordinary powers of a Criminal Court to take cognizance of an offence under section 190 of the said Code. A private party may be the real victim of the commission of a offence, but he is debarred from making a complaint directly to the Court.

40 DLR 326—Makbul Hossain Vs. The State—Proceeding before a Court starts when the Competent Court takes congizance of a offence on police report or on a complaint or upon his own knowledge. No proceeding can be said to be pending before the Magistrate in this case as the police after recording the FIR has not submitted any charge-sheet.

6 BCR 174 (AD)—Abdul Awal Vs. Abdul Mannan—The Police after investigation of the case submitted charge-sheet against 41 persons excluding petitioner. The sub-Divisional Magistrate did not accept the charge-sheet against the petitioner and asked the police to include the petitioner (Abdul Awal) in the charge-Sheet. The Sessions Judge held that the

Magistrate could proceed under section 200 Cr. P. C by holding judicial enquiry. The High Court Division therefore, passed the impugned order directing the Magistrate to issue process against the petitioner and forward the case-record to the Court of Session for trial as a counter case in the same court of Session according to the procedure of trial of cross-cases as laid down in the case of Shahed Ali Vs. State, 13 DLR 414. The Magistrate, of course, may, instead of taking cognizance in this way, proceed to take cognizance either on his own information section 190 (1) (c) or on a Naraji petition if filed against the police-report (section 190 (1) (a) Cr. P. C). In the instant case, cognizance is found to have been taken by the Magistrate himself on the basis of the police report by order dated 22. 12. 82; but this order was erroneously interfered with, and complications were created unnecessarilly, which may be ignored altogether. We do not find any illegality in the High Court Division's order directing inclusion of the petitioner among the list of the accused and for trial of the two cases in the same court according to the procedure governing trials of cross case.

38 DLR 86—Sakya Pada Barua Vs. State—If cognizance of a case had not been taken when the law changing the forum of trial came into force mere fact that FIR had been lodged and charge-sheet had been submitted before the change of forum will not make the case triable under the repealed law. Special Tribunal took cognizance of the offence after it lost jurisdiction to try the same—Its order of conviction illegal.

37 DLR 167—Shafiqur Rahman Vs. The State—On fresh incriminating materials, the Metropolitan Magistrate can take cognizance of an offence against a person earlier discharged. After discharge of the accused the same case cannot be revived against the accused; but this is not a case of revival. In this case when fresh incriminating materials came up before the Metropolitan Magistrate in course of trial he has issued process against the accused suo motu under section 380 of the Penal Code in exercise of his power under section 190 (1) (c) Cr. P. C. We, therefore, do not find any illegality in this respect (Ref : 5 BCR 91).

5 BLD 24—Munshi Lal Meah Vs. Khan Abdul Jalil—Cognizance against the accused persons against whom no charge-sheet has been submitted by the Police-Whether the Magistrate is bound to accept the charge-sheet against whom no charge-sheet is submitted and has no power to entertain any Naraji petition against whom no charge-sheet is submitted—The Magistrate is not bound to accept the charge-sheet in to to—He can either accept the charge-sheet or reject it or can direct further investigation into the matter—The Magistrate can take cognizance against persons shown in column 2 of the charge-sheet as not having committed any offence without sending the case for enquiry—After submission of final report the Magistrate may direct enquiry and after examination of the complainant may take cognizance of the case.

1 BCR 235 (SC)—Dr. Jamshed Bakht Vs. Ameenur Rashid Chy.—It is the filing of the complaint in the court which sets the ball rolling. Such expressions as 'initial statement on oath,' 'examination of the complainant on oath' or 'taking cognizance of the offence' characterise the stages of a criminal proceeding subsequent to the filing of the complaint. A complaint filed in the criminal court is, therefore, the basis (Ref : 1 BLD 314 (SC), 20 DLR 55).

1 BCR 198—Eric N Ford Vs. Government—Petitioner is neither named in FIR nor in charge-sheet as accused. Conversion of petitioner from position of a witness to that of an accused in trial held by a Summary Martial Law Court is without jurisdiction as cognizance can only be taken of an offence on a report in writing by an appropriate officer. Review of such judgment by Sessions Judge is without lawful authority.

3 BCR 123—Zamiruddin Meah Vs. Nasiruddin—A Magistrate is not legally entitled to take cognizance of offence under section 161 Penal Code against public servants under section 190 of the Code of Criminal Procedure.

36 DLR 58 (SC)—Abdus Salam Master Vs. The State—Magistrate is not bound to accept the police final report and

discharge the accused. If from statements on record, the Magistrate finds materials to warrant prosecution, he may take cognizance of the offence under cl. (b) and not under cl. (c) of Sec. 190 (1). The Magistrate's power of taking cognizance under section 1980 (1) in all cases, including those exclusively triable by a Court of Session, has remained unaffected by the repeal (Ref : 35 DLR 140, 14 DLR 96 (SC); 30 DLR 344).

35 DLR 103—Abdur Razzaque Vs. The State—So far as the Court of Session is concerned, proceeding must initiate before a Magistrate as provided in section 190 Cr. P. C.

33 DLR 154 (SC)—Kh. Ehteshamuddin Ahmed alias Iqbal Vs. Bangladesh—Cognizance is taken when the Magistrate issues warrant of arrest against the accused person. 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.

32 DLR 247 (SC)—Abdul Jabbar Khan Vs. The State—Magistrate has been given the power for using discretion whether to proceed by way of issuing processes or not by the court. Wide discretion is given to the Magistrate with respect to the grant or refusal of the process and in the interest of the community generally it is essential that the Magistrate should be vested with an ample discretion in this matter. If the Magistrate having followed the procedure laid down in the Code can exercise his judicial discretion as to whether he ought to issue processes or not, the High Court will respect his dicision and will be slow to disturb his order that he has passed.

30 DLR 124—Mohammad Kalu Bhuiyan Vs. Special Tribunal No. 11. Comilla—Cognizance is merely the mental 'decision of a Magistrate or Judge to take judicial notice of a case.' When a Magistrate or Judge applies his mind to the facts of the case, as contained in the police report and the connected papers, and decided to proceed against the offender with a view to determining the guilt, it is the stage where cognizance of the offence is taken. The Magistrate or Judge is

free in this respect. The police report may provide an aid to the consideration in the matter of taking cognizance, but it is, by no means binding.

30 DLR 58 (SC)—Abdul Ali Vs. The State—Taking cognizance of an offence by a court is a judicial act. There must be placed before the court fact such as will constitute offence. Court cannot act on the mere opinion of police saying some offence has been committed (Ref : 31 DLR 69 (AD)).

29 DLR 282—Anwarul Huq Vs. Sayra Khatun—A Sub-divisional Magistrate has no jurisdiction to take cognizance of offences under section 395 and 397 of the Penal Code. Cognizance of an offence under Special Powers Act without a report in writing by a police-officer not below the rank of a Sub-Inspector is illegal and as such liable to be set aside. Sub-divisional Magistrate cannot on his own initiative send a petition of complaint to start a case and hold investigation (Ref : 29 DLR 122, 28 DLR 185).

29 DLR 25—Cherag Ali Vs. The State—Submission of final report is no bar to prosecute if evidence discloses commission of an offence (Ref : 26 DLR 211).

27 DLR 111—Khorshed Alam Vs. The State—It is open to an informant to submit a naraji petition against a final report submitted by the police before the Magistrate who may treat such petition as a petition of complaint, take cognizance under section 190 (1) (a) of the Code and examine the petitioner under section 200 of the Code.

25 DLR 216—Nizamuddin Vs. The State—Trial Magistrate in the course of trial found evidence of offence punishable under section 215 P. C by one N not on trial and sent the case record to the Sub-divisional Magistrate to take necessary action against N. The Sub-divisional Magistrate acting under section 190 (1) (c) Cr. P. C on receipt of the case record and on perusal of it including the evidence on record issued warrant of arrest against N and on his surrender sent the case back to the same Magistrate for trial of N. The Sub-divisional Magistrate rightly took cognizance and no illegality has been committed (Ref : 16 DLR 255).

21 DLR 310—Ataur Rahman Vs. The State--Section 190 Cr. P. C empowers only the District Magistrate or Sub-divisional Magistrate or some other Magistrate specially empowered in this behalf to take cognizance of an offence. The Magistrate seems to have illegally taken cognizance of the case and as a result the whole trial has been vitiated.

20 DLR 1002—Sultan Ahmed Vs. Abdul Khaleque—Sub-Divisional Magistrate transfers a case with certain accused persons for trial to a first class Magistrate. The latter has no authority to summon a person not forwarded by Sub-divisional Officer to stand trial.

19 DLR 439 (SC)—Ghulam Mohammed Vs. Muzammel Khan—Court is competent to take cognizance of an offence on the basis of police-report.

19 DLR 426 (SC)—Falak Sher Vs. The State—Police challan under section 173 showing some persons as not being accused. Magistrate ignoring police report summoned them under section 190 (b). Magistrate's competence to do so cannot be challenged.

12 DLR 489—Azizur Rahman and others Vs. The State—Complaint received under section 190 (a) and the complainant is examined under section 200; after that referring the case under section 156 (3) for police investigation is illegal. if any enquiry is desired, it can be only under section 202. Stay of further proceeding ordered by a superior court, subordinate court is bound to respect it.

10 DLR 152—Dr. Kazi Habibul Islam Vs. The State—Magistrate is empowered to take cognizance even a non-cognizable offence on a police report.

9 DLR 633—Abdul Noor Vs. The State—Unauthorised investigation does not render the trial illegal.

5 DLR 14 FC—Abdus Sattar Molla Vs. The Crown—A Magistrate who, in the course of the trial on the evidence of some of the prosecution witnesses, brought another person to stand his trial upon a charge takes cognizance of the offence with regard to that person. When the Magistrate trying that person without questioning him under section 191 and without his consent acts without jurisdiction.

48 DLR 55—Shaban Ali Mia, Shukur Ali Khandaker Vs. State, Md Harmuz Ali Mollah—It appears that the naraji petition has been filed on a complaint but as an application out of apprehension that the Magistrate might accept the recommendation of the Investigation Officer. It is no more than an application to the Magistrate to be cautious and careful in considering the materials before him.

48 DLR 143—Sultan Ahmed alias Sentu Vs. State—Sessions Judge cannot take cognizance of a case against the accused sent up in the supplementary charge-sheet without cognizance being taken by the Magistrate. [Ref. 3 BLT (HC) 162].

8 BLT (HC) 376—The State Vs. Md. Joynal Abedin & Ors—Cognizance—the learned Judge of the Bishesh Adalat ought to have applied his mind in the allegations made in the charge sheet and also in the materials on record as envisaged under Section 173 (1) (a). Section 173 (3A) and Section 190 (1) (b) of the Code, including if necessary, the case-diary itself, so as to satisfy himself about the prima facie evidence against the accused persons and also about the probabilities of their guilt-the Magistrate must examine those materials and apply his mind before taking decision under Section 190 (1) (b) of the Code however painstaking such exercise may appear to be, otherwise, the purpose for insertion of Sub-section 3A would be frustrated and will be a fruitless idle formality.

3 BLT (HC) 162—Sultan Ahmed Vs. The State—Cognizance—Sessions Judge cannot take cognizance of the case against the accused sentup in the Supplementary charge-sheet directly without cognizance being taken by the Magistrate under section 190 of the Code of Criminal Procedure.

Revision—Revision lies under section 435 and 439A Cr. P. C before the Sessions Judge against the order of the Magistrate. An order of a Magistrate refusing to take cognizance of an offence may be dealt with by the Sessions Judge as well as by High Court Division in revisional jurisdiction (29 Cal 410). The order of a District Magistrate directing the police to submit charge-sheet against certain

persons is a judicial order and subject to the revisional jurisdiction of the Sessions Judge as well as of the High Court Division (AIR 1928 Pat 585, 53 Cr. LJ 1176).

6 BLC (HC) 1—Daily Banglabazar Patrika and two others Vs. District Magistrate (Spl. Original)—As the fatwa means legal opinion of a lawful person or authority when legal system of Bangladesh empowers only the Courts to decide all questions relating to legal opinion on the Muslim and other laws in force and hence any fatwa including the instant one are all unauthorised and illegal which must be made a punishable offence by the Parliament immediately even if it is not executed. The District Magistrate should have immediately taken cognizance of the offence under section 190 of the Code.

53 DLR 461—Golam Rahman Vs. Md Bazlur Rahman (Babu) (Criminal)—Sections 190, 200 & 202—An enquiry or an investigation can be directed by the Magistrate under section 202 of the Code in order to ascetain the nature of the allegation and to decide whether cognizance of the offence should be taken because till then he is in seisin of the case.

191. Transfer on application of accused.—When a Magistrate takes cognizance of an offence, under sub-section (1), clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be sent to the Court of Session or transferred to another Magistrate.

Scope and application—The provisions of section 191 are mandatory in character, and failure to comply with those provisions vitiates the trial (48 Cr. LJ 799, 25 Cr. LJ 1224). The Magistrate is bound to inform the accused of his right to have the case transferred. If he omits to inform the accused of his right, or if inspite of objections taken by the accused the Magistrate proceeds with the case, the proceedings will be wholly void. In a case relating to an offence exclusively triable by a Court of Session, the application of section 191 is not

attracted to the proceedings. The principle of this section applies to security proceedings. Where security proceedings are started against any person on the Magistrate's own knowledge, it is not open to him to hear the case and pass final orders therein and the case should be transferred to some other Magistrate to be heard and disposed of by him (29 Cal 302). Section 191 has no application to a Special Judge appointed to try special cases, even if it is assumed that he takes cognizance under section 190 (1) (c).

16 DLR 34 (WP)—Mirza Muhammad Abbas Vs. The State—When a Magistrate issues summons to a person mentioned in Col. No. 2 of charge-sheet he is deemed to be acting under section 190 (1) (c) and is bound to comply with provisions of section 191 and to inform the accused that he is entitled to have the case tried by another Magistrate.

14 DLR 121—The State Vs. Satyapada Biswas—Section 191 of the Code clearly prescribes the maximum limit upto which the Magistrate can proceed and no further without infringing the principle upon which the section itself is based. This limit is 'before any evidence is taken.' The principle underlying the section is that no man should be a Judge in his own case.

5 DLR 14 FC—Abdus Sattar Mollah Vs. The Crown—When a Magistrate having power to act under section 190 (1) (c) takes cognizance of an offence against a person under cl. (c), he must inform the accused, under section 191 of the Code, that he is entitled to be tried by another court, the Magistrate's failure to acquaint the accused of his right under section 191 vitiates the trial.

50 DLR 325—Hifzur Rahman and 2 others Vs. State—The Magistrate cannot proceed with the trial himself as the offence alleged is triable in the court of Sessions. Provision of section 191 of the Code is not applicable in the case triable in the court of Sessions.

192. Transfer of cases by Magistrate.—(1) The Chief Metropolitan Magistrate, or any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has

taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or send him for trial; and such Magistrate may dispose of the case accordingly.

Scope and application—A Magistrate can transfer a case under this section only if he has taken cognizance of the case (AIR 1961 (SC) 980). Transfer by a Magistrate other than one who took cognizance of an offence is a defect of jurisdiction, which is not curable (42 CWN 246). Where the Magistrate has not taken cognizance of any offence his sending the complaint to another Magistrate for disposal will not be a transfer of a case under section 192. The sending of the complaint in such a case is by way of administrative action (AIR 1961 (SC) 986).

32 DLR 247 (SC)—Abdul Jabbar Vs. The State—Section 528 (2) Cr. P. C provides that the District Magistrate or Sub-Divisional Magistrate may withdraw any case from or re-call any case which he has made over to any Magistrate subordinate to him and may inquire into or try such case himself or refer it for inquiry or trial to any other Magistrate competent to inquire into for trial of the same. The reading of two sections 528 and 192 Cr. P. C clearly reveals that a case which has been transferred to a Magistrate could be withdrawn to the file of the District Magistrate or Thana Magistrate.

11 DLR 364—Prabhat Chandra Bhattacharjee Vs. Mahmud Ali—An Additional District Magistrate may, after passing an initial order under section 145 (1) of the Code, transfer the case under section 192 to a Magistrate subordinate to him and such Magistrate will have jurisdiction to deal with the case, although he has no territorial jurisdiction over the properties as to which any breach of the peace was likely.

11 DLR 42 (WP) (Karachi)—The State Vs. Ali Mohd.—The object of a transfer under section 192 Cr. P. C is that the

transferee Magistrate has himself to inquire into or try the transferred case. There being this restriction in law on the purpose of transfer made under section 192 the transferee Magistrate, will transgress it if he transfers the case of some other Magistrate, and such an order of transfer would be ultravires and not curable under section 529 (f) of the Code. The correct procedure for transferring a case which has been transferred under section 192 Cr. P. C is to withdraw or re-call it and then to transfer it to any other subordinate Magistrate of competent jurisdiction. But a transferee Magistrate cannot withdraw or re-call a case transferred to him from his own file.

7 DLR 351—Haji Keramat Ali Pandit Vs. Sadat Ali—The word 'case' in section 192 includes a case under section 133.

193. Cognizance of offences by Courts of Session.—(1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been sent to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Government by general or special order may direct them to try, or as the Sessions Judge of the division, by general or special order, may make over to them for trial.

Scope and application—Sections 193 and 195 regulate the competence of the court and bar its jurisdiction in certain cases excepting in compliance therewith. Section 193 (1) lays down that a Court of Session is not a court of original jurisdiction but could be seized of a case only when the case is sent under section 205C Cr. P. C by the Magistrate to the Court of Session. In view of the changes made by L. R. O., 1978 on receiving a case from the Magistrate, the Court of Session under section 193 (1) is seized of the entire case and can summon any person as an accused who might appear to be concerned with the commission of the offence irrespective of the fact that he was declared innocent by the police (AIR 1955 (SC) 196). An Additional Sessions Judge and Assistant

Sessions Judge are to try those original cases which come to him under section 193.

42 DLR 286—Abdul Matin Vs. The State—Case sent to the Sessions Court by Upa-zila Magistrate-Sessions Judge recorded some evidence-Prosecutor made an application for sending to Upa-Zila Court for taking cognizance against some persons allegedly implicated in the offence, by the witnesses in Sessions Court. Sessions Judge made an order accordingly-Magistrate complied with the order of the Sessions Judge, Held; Order of Sessions Judge is illegal and consequently cognizance taken of by the Magistrate thereon is illegal. The Court of Sessions or the High Court Division has no jurisdiction to interfere with the discretion of the Magistrate in the matter of taking cognizance of any offence irrespective of the fact whether the offence is triable by a Court of Sessions or not (Ref : 38 DLR 86).

35 DLR 103—Abdur Razzaque Vs. The State—Court of Session is precluded from taking cognizance of an offence as a court of original jurisdiction (Ref : 6 BSCR 83 (AD), 3 BLD 184, 3 BLD 108).

194. Omitted.

195. Prosecution for contempt of lawful authority of public servants.—(1) No Court shall take cognizance—

(a) of any offence punishable under sections 172 to 188 of the Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

(b) **Prosecution for certain offences against public justice.** of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

(c) **Prosecution for certain offences relating to documents given in evidence.** of any offence discribed in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.)

(2) In clauses (b) and (c) of sub-section (1), the term 'Court' includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Registration Act, 1908.

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situated :

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and

(b) where appeals lie to a Civil and also to Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offence named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal to the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

Scope and application—The object of this section is to prevent improper or reckless prosecution by private persons for offences in connection with the administration of public justice and those relating to the contempt of lawful authority of a public servant (AIR 1942 Cal 79). It is aimed at giving protection to parties and witnesses, against vexatious or frivolous prosecutions for their resorting to courts and giving evidence therein. The provisions of this section are mandatory. In the absence of a complaint required by the section the court cannot take cognizance of an offence (PLD 1973 Lah 1410). A court cannot take cognizance of the case at all unless the special complaint has been filed (37 Cr. LJ 1134). The absence of a complaint as required by this section is an illegality which vitiates the trial and conviction (AIR 1936 Mad. 89). Where the complaints is not in conformity with the provisions of this section, the court has no power even to examine the complainant on oath (AIR 1932 Mad. 253). An objection as to jurisdiction of a Magistrate to try a case on the ground of want of complaint as required by this section goes to the root of the case and should not be reserved for consideration till the entire evidence is recorded (AIR 1939 Mad. 579). Where land is attached under section 145 Cr. P. C and the crops on the land are removed by the accuseds in violation of the court's order, they can be prosecuted for theft though there is no complaint by the court under section 188 (PLD 1959 Dac. 167). The word 'complaint' in section 195 (1) means a complaint as defined in sections 4 (1) (h) Cr. P. C. In respect of offences mentioned in cl. (a) of sub-section (1), it is the public servant concerned or some other authority to whom he is subordinate who is competent to make a complaint (AIR 1942 Cal. 434). This section does not permit any delegation of authority by the public servant concerned (AIR 1955 Bom. 315). In the case of

an offence under section 188 P. C the complaint must be by the public servant whose order has been disobeyed, or some officer to whom he is subordinate (PLD 1972 Pesh. 128). Where an order under section 144 of the Code passed by a first class Magistrate while in charge of the file of a Sub-Divisional Magistrate is disobeyed, a complaint filed by the first class Magistrate who would be the public servant concerned under section 195 (1) (a) in respect of an offence under section 188 P. C would be perfectly valid although on the date he makes the complaint he is not functioning as a Sub-Divisional Magistrate (AIR 1956 Cal. 102). Where a person had been charged of violating an order passed by the District Magistrate under section 144 Cr.P.C but he was prosecuted and convicted under section 188 P. C on a complaint instituted by a police-officer; the conviction was rendered illegal for non-compliance of the mandatory provision of section 195 (1) (a) Cr. P. C under which the complaint should have been instituted either by the District Magistrate or by some officer to whom he was subordinate, Cl. (c) of section 195 (1) Cr.P.C must be strictly construed, because it encroaches upon the jurisdiction of the ordinary criminal court which has been empowered to punish offences. Section 195 (2) (b) applies only where the offence under section 222 P.C is committed in or in relation to a proceeding in court (AIR 1942 Cal. 263). Where the police finds on investigation that an information or complaint made to them is false and bring it to the notice of the Magistrate who there upon orders the police to stop further investigation, or to remove the case from his file, or makes an inquiry into the truth of the police report either himself or through another Magistrate, a complaint under section 222 is required to be filed by the Magistrate under cl. (b) (23 Cr. LJ 904). Where the FIR lodged by the petitioner had resulted in one of the accused being brought under arrest and led to the application for bail by two of the accused persons, if the FIR is false, the remand proceeding and the bail proceeding which were connected with the false FIR and the offence under section 212 P. C committed by him by lodging the same must be held to be an offence under section 222 and no cognizance of the offence under

section 222 P. C could be taken without a complaint by the Magistrate. It is only the court in or in relation to which proceeding the offence is committed, or the court to which such court is subordinate within the meaning of sub-section (3) that is competent to make a complaint in respect of the offence, mentioned in clauses (b) and (c). No other court can file a complaint (AIR 1960 All 350).

Withdrawal of complaint—A withdrawal of a complaint under sub-section (5) is an administrative or executive act and hence it is not open to revision by the Sessions Judge or the High Court Division (AIR 1929 All 931, AIR 1935 Pesh 9). Where the District Magistrate summarily rejected an application for the withdrawal of a complaint preferred by the Magistrate without giving notice to, or hearing the applicant, it was held that the order was open to revision under section 439A Cr. P. C (Ref : 35 Cr. LJ 34, 8 DLR 708, 1 PLD 33).

56 DLR 452—Abdus Sattar Pramanik Md and another Vs. State and another—Section 195(1)(C)—In the instant case, in the absence of the original document being produced in the proceeding the bar under section 195(1)(C) will not apply.

53 DLR (HC) 19—A Revenue officer holding an inquiry in a mulation proceeding in the premises, does not become a court as he does not really adjudicate a right and he does not give a decision which is binding on the parties.

45 DLR 101 (AD)—Serajuddowla Vs. Abdul Kader— Proceeding in Court—In view of the decision that a Magistrate acts in his judicial capacity while discharging an accused on the basis of a final report by the Police and the reasonings in the majority judgment in AIR 1979 (SC) 777, the offence under section 211 Penal Code was committed in relation to a proceedings in Court and as such the bar under section 195 (1) (b) is attracted. Complaint of Court—Requirement—When the Magistrate considered the prayer of the investigating officer that the appellant be prosecuted for making a false charge and the prosecution report upon which cognizance was taken shows that the same was filed as directed by the Magistrate, it is clear that the prosecution of the appellant was sanctioned by the Magistrate himself and as such it could not be said that

the cognizance was taken in violation of section 195 (1) (b) (Ref: 13 BLD 94 (AD), 38 DLR 321, 28 DLR 58).

44 DLR 533–Ajit Kumar Sarkar Vs. Radhakanta Sarkar–Private complaint, when incompetent–Ingredients of offence such as forging of a document and making use of such document in court by a party to the proceeding if found present in a case then the mandatory provision against filing of a private complaint comes into play. The instant proceeding initiated by the complainant opposite party is a bar under section 195 (1) (c) Cr. P. C and the courts concerned only have, sole jurisdiction to make a complaint in the interest of justice.

42 DLR 8–Sona Meah Vs. The State–No court can take cognizance of any offence under section 467 of the Penal Code without a complaint in writing by the court in which the document was given in evidence or by a court to which the said court is subordinate. Complaint not having been made by a competent court, the criminal proceeding under sections 467 and 471 of the Penal Code has to be quashed (Ref : 9 BLD 209).

24 BCR 213 (HC)–Abdul Gafur Vs. Md Nurul Islam–section 195(1)(c)–Words "document produced or given in evidence" contemplate to produce of original document alleged to have been forged and not a photocopy. The word 'or' between words "produced" and "given in evidence", in section shows that the two things are disjunctive. This where the original document in respect of forgery has not been given in evidence clause (C) of section 195(1) does not apply.

5 BCR 150–Mst. Saleha Khatun Vs. The State–When a competent court came to the view that a prima facie case is disclosed and framed a charge in view of the said prima facie case that an offence was disclosed, the Court would be extremely reluctant to interfere in quashing a proceeding at the interlocutory stage or at the early stage of the proceeding. Offence must be one which has been committed by a party to a proceeding. If an offence has already committed by a person who does not become a party to a proceeding till some period or some years after the commission of the offence, the offence

cannot be said to have been committed 'by a party' within the meaning of clause (c) of section 195 Cr. P. C.

41 DLR 180—Mr. A. Y. Masihuzzaman Vs. Shah Alam—There is no bar for an individual in making a complaint in respect of alleged defamatory statement made in a judicial proceeding, Section 198 Cr. P. C enables an individual to file such complaint. There is no provision in the Code of Criminal Procedure that a Court before which a proceeding is pending will initiate a complaint for the prosecution of a witness making defamatory statement. Judicial Proceeding—Court of first instance—Court's duty to apply its judicial mind to reflections made by the alleged defamatory statement vis-a-vis the exceptions under law.

40 DLR 226 (AD)— Abdul Hai Khan Vs. The State—Jurisdiction of a Criminal Court when barred—Which Court is empowered to take cognizance of offences in the section 195 (1) (c). There is specified procedure and method for filing complaint by a Court in respect of offences described in clauses (a) and (b) but there is no such specified procedure for offences in clause (c) of section 195 Cr. P. C provisions in section 195 like the provisions in sections 196-198 Cr. P. C, are exceptions to the general and ordinary powers of a Criminal Court to take cognizance of an offence under section 190 of the said Code. A private party may be the real victim of the Commission of an offence, but he is debarred from making a complaint directly to the Court.

Interpretation of Statute—The language of clause (1) (c) of section 195 of the Code of Criminal Procedure admits of two interpretations—Legislative intent in making the prohibition against a private complaint is to save a party from vexatious prosecution by their opponents and to avoid a conflicting decision between two Courts-Purpose of prohibition in section 195 (1) (c) Cr. P. C will be defeated if the cases of forgery committed before the institution of the proceeding in which the document was used in court do not apply. It is therefore, clear that the offences referred to in cl. (c) when committed in pursuance of a conspiracy or in the course of the same transaction, will fall within the ambit of sub-section (4) of

section 195 including their abetments or attempts independent of the dates of their commissions. Section 476 is not independent of section 195 of the Code-Section 476 does not abridge or extend the scope of section 195 (b) or (c). No cognizance can be taken against one of the appellants who appears to have forged the document except on a complaint by the court. Legislature did not intend any anomalous situation that might arise if the trial of one offence may be made dependent upon a possible complaint by the Court while the other offence is tried upon a private complaint. At the centre of controversy lies the phraseology 'committed by a party to any proceding in any Court.' This phrase has been omitted in India. Restricted application of clause (c) to be discarded. The clause will be applicable even when the offence alleged is committed by the party to proceeding in any court before becoming such party if it is produced or given in evidence in such proceeding (Ref : 39 DLR 109, 8 BCR 162 (AD), 5 BLD 193 (AD), 20 DLR 66).

38 DLR 97 (AD)—Hajee Abdus Sattar Vs. Mahiuddin—When forged document are filed in Court, on a complaint thereon the Supreme Court may act. As to the authenticity of these certified copies, the respondent did not apply to the Court to lodge a comlaint under section 195 Cr. P. C against the appellant on a charge of forgery who produced or filed in evidence these documents in a judicial proceeding. Such a complaint may be filed under section 195 (1) (c) Cr. P. C even now if the respondent dares to move the Court for that purpose. These documents issued and certified to be true copies by an authorised officer of the Government are admissible in evidence (Ref : 8 DLR 296, 3 DLR 3 P.C).

38 DLR 60 (AD)—Md. Muslim Khan Vs. The State—Where complaint has not been made by the concerned Court under section 195 (1) (c) Cr. P. C in a proceeding held under the Cr. Law Amendment Act, cognizance of the offence cannot be taken. And when an offence within the meaning of sub-section (1) (c) of section 195 of the Code is committed in a proceeding before a Court then the complaint shall have to be filled by the Court or by any other court to whom that court is

subordinate. Each and every offence of forgery committed in connection with a proceeding of a court is not covered by clause (c) of section 195 (1) Cr. P. C. To bring a case within its fold, the offence must be an offence of forgery in respect of a document which is 'produced or given in evidence' in that very proceeding, secondly, the offence in respect of that document must have been committed by 'a party to that proceeding.' (Ref: 21 DLR 729, 20 DLR 132 (WP), 6 BLD 164 (AD), 6 BCR 43).

38 DLR 270—Idris Ali Vs. The State—Section 195 of the Code of Criminal Procedure puts restriction on the general power conferred upon all courts of the Magistrate by section 190 of the Code of Criminal Procedure to take cognizance of offences. It provides that when an offence specified in section 195 (1) (c) of the Court appears to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such a proceeding, no Court is competent to take cognizance of such an offence except on the complaint in writing of the Court concerned or some other court to which it is subordinate. This provision thus requires that without a complaint in writing of the Court concerned or some other Court to which it is subordinate, no prosecution for an offence mentioned in clause (c) of sub-section (1) of section 195 of the Code can be taken cognizance of. A revenue officer dealing with mutation case does not constitute a Court within the meaning of section 195 (1) (c) of the Criminal Procedure Code. There is no definition of the expression 'Court' in the Code of Criminal Procedure. The words 'judicial power' as used in section 71 of the Constitution means the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property.

7 BLD 93—Ali Hossain Vs. The State—Whether a person can be ordered to be prosecuted by a court for producing a fabricated document before a police officer and not before any court—Admittedly the document was not produced by one of the accused persons in any court but it was produced before a police officer—The exhibit although admitted by both the parties as fabricated document, was not produced in any court

or given in evidence in any court—The Sessions Judge has committed an error in passing the impugned order for lodging a complaint against the appellant.

7 BCR 94 (AD)—Mir Mahiruddin Meah Vs. Rokeya Hossain—Allegation stated in the complaint petition that the appellants filed a civil suit being O. S. No. 112 of 1982 and obtained an exparte decree from the court of Sub-Judge. Rangpur to the effect that a deed of gift executed on 21. 6. 1980 by the respondent's late husband was forged, collusive and void as it was obtained by giving false evidence, making false statement and false personation. The alleged offences have been committed in relation to a proceeding in the Civil Court and no Court is competent to take cognizance of an offence mentioned in clause (b) of section 195 Cr. P. C except on a written complaint by the court concerned. The refusal of the High Court Division to quash the proceeding in question is not justified (Ref : 5 BLD 73 (AD)).

7 BCR 152 (AD)—Nur Ahmed Vs. Kalimuddin Ahmed—Clause (c) of section 195 Cr. P. C will apply to offences under section 467 and 468 of Penal Code as these are both offences described in section 463 of the said Code. Sub-section (2) of section 195 Cr. P. C provides that the term 'Court' includes a Civil, Revenue or Criminal Court but does not include a Registrar or Sub-Registrar.

5 BLD 285 (AD)—Syed Ebadat Ali Vs. The State—Cognizance in respect of a document produced or given in evidence in court—What is required is that the court must come to conclusion that an offence has been committed. If that is the case the court can launch prosecution. In the absence of such conclusion by the Civil Court prosecution and conviction for forgery of a document produced in Civil Court is illegal (Ref : 5 BCR 218 (AD)).

25 DLR 472—Golam Sarwar Vs. The State—Where the District Judge forwarded to the District Magistrate a copy of his judgment with a latter in which he called attention to his remarks as regards the forgery or fabrication of evidence and requested the latter to take up the matter for judicial

investigation, the forwarding letter was the sufficient complaint. On receipt of a complaint under section 195 (1) (b), the Magistrate has no jurisdiction to call upon the persons complained against to show cause against prosecution. He is to try the case straightway.

15 DLR 108—Md. Fayezul Huq Vs. Akbar Haji—No preliminary inquiry under section 476 Cr. P. C is necessary in receipt of an offence falling under section 183 Penal Code as such the matter is covered by section 195 (1) (a) Cr. P. C in which case complaint can be made straight without preliminary inquiry (Ref : 12 DLR 78).

14 DLR 23—S.J. Shostery Vs. Abdus Salam—The pendency of the proceeding under cl. (c) of section 195 of the Cr. P. C before a court in no way affects the disposal of an application before the High Court of a person who is not a party to such proceeding before it. In a criminal proceeding, strictly speaking, only the State and the accused are parties, and therefore, there is no necessity of extending the protection afforded by section 195 to any other person who is neither a party to the proceeding nor a witness in the same.

12 DLR 453—Rahimuddin Vs. The State—Where there were several offences to be tried and one of such offences required a complaint to be made by a competent authority and a complaint for the trial of that offence had not been obtained, the court may proceed with the trial of the other offences which did not require a complaint to be made by a competent court.

9 DLR 269—Ali Meah Vs. The Crown—In respect of the offences mentioned therein, Section 195 (1) (c) and consequently Section 476 Cr. P. C applies to parties only and a witness, not being a party, no complaint under section 476 can be made against the witness.

8 DLR 213—Nishi Chandra Majumder Vs. The Crown—Complaint in respect of an offence referred to in section 195, when the trying Magistrate is transferred, can be made alone by the successor-in-office (Ref : 8 DLR 18 Note).

5 DLR 454—Dr. Abhoy Charan Vs. F. A. Chowdhury—Sub-Registrar or District Sub-Registrar is not a court. No sanction under section 195 Cr. P. C for prosecution in respect of offences falling within cl. (b) and (c) of Section 195 (1) can be given by a Registrar or a Sub-Registrar when such offences are committed before such officers in as much as such officers are not a court. In respect of offences falling within section 195 (1) (a), they can lodge complaints as public servants.

3 BCR 26—Q.M. Nasimul Huq advocate Vs. The State—Deed of exchange of property between private persons of Bangladesh and India filed before the appropriate Revenue Court by an advocate who is not a party to the deed of exchange. The Revenue Court can only make upon an application a formal complaint under section 195 in a proceeding under section 476 Cr. P. C in respect of alleged forgery of a document filed before it. Such procedure having been not followed proceeding taken against accused persons without following the provisions of section 195 and 476 Cr. P. C is illegal (Ref : 9 PLD 747).

49 DLR (AD) 159—Shamsuddin Ahmed Chowdhury Vs. State and another—When a fraudulent document is not produced in a proceeding before court private complaint is not barred.

It is absolutely clear that unless the document is filed in court, the court cannot make a complaint. In the present case in view of the positive finding of the High Court Division and on the failure of the learned Advocate to show before us that, in fact the allegedly fraudulent document was produced in Cr Case No. 116 of 1983, the private complaint at the instance of the informant is not barred.

48 DLR 286—Wahida Khan Vs. Shakar Banoo Ziwar Sultan and State—In a proceeding where a forged document has been used the Court concerned should make the complaint. The criminal court should not take cognizance on a private complaint. The want of complaint under section 195 is incurable and the lack of it vitiates the whole trial.

48 DLR 89—Anwar Hossain & others Vs. State & others—If the officer to complain is the officer also to take cognizance then there is no necessity of filing a written complaint by the same officer to himself for taking cognizance of an offence against the accused persons.

8 MLR 290 (AD)—Abul Hossin (Md) Vs. State—Upazila Revenue officer is not a court and the mutation proceedings are not judicial proceedings. And as such section 195 of the Cr.P.C is not attracted in respect of use of forged document in the said proceedings. Therefore case started on police report is maintainable.

4 MLR (AD) 223—Sadat Ali Talukder (Md) Vs. The State and another—Then a direct criminal case is barred—Section 195(1) (C) of the Code of Criminal Procedure, 1898 is not attracted when the accused is charged for the offence under sections 467, 409 and 420 of the Penal Code, 1860 read with section 5(2) of the prevention of Corruption Act, 1947.

20 BLD (HC) 105—Md. Masudur Rahman Mollah and another Vs. The State—Any allegation of offence alleged to have been committed in or in relation to any proceeding in any Court should not be taken lightly. There is no scope for leniency or complacency in this regard. Rather, it is imparative on the part of the concerned Court to deal promptly with such allegation and strictly in accordance with law as it concerns the administration of public justice.

5 MLR (AD) 343— Ali Aman and another Vs. The State and another—Section 195 bars taking of cognizance in respect of forged document filed in a Civil, Criminal or Revenue court except upon a complaint lodged by the court concerned. But when the forged document is not filed in any court, section 195 is not bar against taking of cognizance. Therefore the proceedings being competent in law cannot be quashed.

8 BLT (HC) 292—Abul Hashem Hawlader Vs. The State—The Sub-Divisional Officer made the complaint on a perusal of the petition filed by the petitioner to him and also on a perusal of the case record of Misc Case No. 2357-N/72-73. Before making such complaint, the Subdivisional Officer did

not hold any preliminary inquiry required by law for ascertaining the truth or falsehood of the allegations made by the petitioner. The learned Magistrate also took cognizance of the offence without ascertaining as to whether the complaint disclose any offence referred to in Section 195 (1) clause (b) or clause (c) of the Code of Criminal Procedure. We are, therefore, of the opinion that the learned Magistrate drew up the proceeding mechanically without application of his judicial mind.

5 MLR (HC)—390—Masudur Rahman Molla (Md) and another Vs. The State—Section 195 and 476 (1)—Procedure of complaint for giving false evidence—It is not the requirement of law that the court should wait till conclusion of trial of the case where false evidence is given. Section 476(1) prescribes the procedure of making complaint against offence mentioned in section 195. It is also not mandatory that the court shall hold preliminary enquiry before sending complaint. Complaint can well be sent without holding preliminary inquiry.

11 BLT 1 (AD)—Md Rabi Shaikh @ Rabi Shaikh & another Vs. State—Section 195(1)(C)—Forged deed was filed for the purpose of mutation it would not be banred under section 195(1)(C) of the Cr.P.C because the upazila Revenue Officer did not perform the function of revenue court when dealing with a mutation case.

7 BLT (AD) 342—Md. Sadat Ali Talukder Vs. The State & Anr—Accusation of committing offences under sections 409/420/467 of the Penal Code and under Section 5(2) of Act 11 of 1947— the title suit against the Government and others in respect of the disputed land is pending—Held: As cognizance was taken not only under Section 467 of the Penal Code but also under Sections 409 and 420 of the Penal Code and under Section 5(2) of Act 11 of 1947 and as such the criminal case is not barred under Section 195 (1) (C) Cr. P.C. [Ref ; 4 BLC (AD) 228]

7 BLT (HC) 26—Md. Abu Sufian Mia Vs. The State—The offence committed by the accused is the misappropriation of the amount of T.A. bills of the witnesses withdrawn, from the

bank after preparing fictitious T.A. Bills which are purely an administrative matter not part of any judicial proceedings. So, the above provisions are not applicable. [Ref ; 4 BLC (AD) 193].

4 BLT (AD) 84—Md. Takumuddin Par Vs. The State—Whether the private complaint in respect of offence under sections 467/471 of the Penal Code during the pendency of a civil suit is barred under section 195 (1) (C) of the Code of Criminal Procedure.

Section 195 (1) (C) of the Code of Criminal Procedure provides that in case where the alleged forged deeds have been produced or given in evidence in any Court the Institution of the Criminal case is barred on the basis of a private complaint.

Revision—Revision lies before the Sessions Judge under section 435 and 439A Cr. P. C against the order of the Magistrate. The bar of jurisdiction under this section can be pleaded for the first time in revision.

Appeal—No appeal lies against the refusal of a public servant to file a complaint under section 188 P. C (40 Cr. LJ 568).

8 BLC 162 (AD)—Abu Daud Md Sarder Vs. State—Section 195(1)(C) & 561A.—In view of the provision of clause (C) of section 195(1) of the Cr.P.C respondent No.2 my approadch the court of taking appropriate stap against the appellant since he used a deed in the suit as genuine in spite of knowing the same as being forged and then it is for the court alone that may decide as to whether it would initiate proceeding against the appellant for committing on of the offences or more as mentioned in claise (C) of section 195(1).[Ref: 23 BLD 95; 11 BLT 47].

7 BLC (HC) 43—Abdus Salam alias Md Abdus Salam Vs. Samala Bibi & others (Criminal)—Sections 195(1)c) & 561A—As the original deed was not produced before the Settlement Court the provisions of section 195(1) (c) are not attracted in the present case when in the said section the word 'document' has been used meaning thereby the original document but not certified copy thereof and accordingly, the Rule is discharged.

53 DLR 19–Shahera Khatun & ors Vs. State and another (Criminal)–A criminal Court can take cognizance of any offence described in sections 463, 471, 475 and 476 of the Penal Code on the basis of complaint by an aggrieved party when such offence is alleged to have been committed by a party to any mutation proceeding in respect of a document produced in evidence in such proceeding.

9 MLR 95-99–Abdul Gafur alias Khan Mia and others Vs. Md. Nurul Islam and the State–Does not apply to a case where photo copy of forged document is produced–The warrant of the law as contained in section 195(1)(c) of the Code of Criminal Procedure, 1898 is that the Court in which the original forged document has been produced and given in evidence is required to send complaint in writing to the court of competent jurisdiction whereupon only cognizance can be taken of the offence. This provision does not apply to a case where photocopy of the alleged forged document is produced. In such case private complaint is competent.

9 MLR 133-136–Chitta Ranjan Das @ Chitta Ranjan Sinha Vs. Shashi Mohan Das and another–Revenue officer dealing with mutation case is not a court and as such is not required to lodge complaint against forgery of document–Revenue officer while dealing with mutation case being not a court is not required under section 195(1)(c) of the Code of criminal Procedure to lodge complain against forgery of documents. In such case private complaint is maintainable.

6 MLR (AD) 161-165–Makhan Baral and others Vs. Shaylendra Nath Mondal and othes–Section 195(1)(c) and 476A–Complaint against filling and using false and fraudulent document before court- It is the duty of the Court to send complaint to the Magistrate of competent jurisdiction for prosecution for filing and using fraudulent document in a proceeding before such court.

54 DLR (HC) 12–Humayun Majid Vs. Bangladesh Bureau of Anti-Corruption and ors (Spl. Original)–Sections 195 & 476–When a question of right, title and interest relating to any immovable property is in seisin of the Court, the Anti-

Corruption Department has no jurisdiction to hold any inquiry under articles 31 and 50 of Anti-Corruption Manual.

54 DLR (HC) 498—Syed Ahmed Chowdhury Vs. Abdur Rashid Mridha, Retired Process Server, 2nd Mussif Adalat and 15 ors (Criminal)—The offences alleged to have been committed in connection with proceeding of a civil court cannot be tried by any other court except upon a complaint by the said court.

21 BLD (HC) 348—Shaikh Mominur Rahman Vs. The State and anr—Section-195(1)(c)—Although an allegation has been made in the case that Title Suit No. 71/2000 was filed relying on the alleged forged document but it is not stated whether the alleged document was produced in Court in the said civil proceeding. In the absence of definite allegation of actual use of the alleged document, it is premature to hold that the criminal proceeding is barred under section 195(I) (C) of the Code.

22 BLD (HC) 454—Abdus Salam alias Md. Abdus Salam Vs. Salama Bibi and the State—Section 195(1)(c)—When there is an allegation of forgery, the question whether a deed is forged or not cannot be determined when the original is not filed Filing of a certified copy will not make the provisions of section 195(1)(C) applicable.

5 BLC 598—Abdul Ahad @ It Md Abdul Ahad Vs. State—Section 195(1)(a) and 561A –The learned Magistrate sue motu initiated a proceeding under section 188 of the Penal Code and took cognizance of the offence violating the provision of section 195(1)(a) of the Code of Criminal Procedure providing that no Court shall take cognizance of any offence punishable under sections 172 to 188 of the Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate and hence there is illegality in initiating the proceeding against the petitioner and others and as such the proceedings are quashed.

4 BLC 50—Nuruddin Ahmed and 2 others Vs. State—Section 195 (1) (c) of the Code of Criminal Procedure has reference only to a forged document and not to a copy of it.

The Court before which a copy of a forged document is produced is not in a position to determine the genuineness or otherwise of the questioned deed in the absence of the original. The production of the certified copy of a forged document does not, therefore, invoke the bar against Prosecution under section 195 (1) (c) of the Code.

4 BLC 50—Nuruddin Ahmed and 2 others Vs. State—Section 195 (1) (c) of the Code of Criminal Procedure has reference only to a forged document and not to a copy of it. The Court before which a copy of a forged document is produced is not in a position to determine the genuineness or otherwise of the questioned deed in the absence of tthe original. The production of the certified copy of a forged document does not, therefore, invoke the bar against prosecution under section 195(1) (c) of the Code.

4 BLC 552—Maniruzzaman alias Md Maniruzzaman Vs. State—An officer dealing with a miscellaneous case regarding exchance of properties merely acts as an executive authority and does not act as an executive authority and does not act as a judicial machinery nor is he invested with any judicial power attraching the provisions of section 195 (1) (c) of the Code of Criminal Procedure.

5 BLC 50—Gulshan Ara Vs. Secretary, Ministry of Home Affairs and othes—Complaint by any other person including police regarding forgery of a document produced in evidence before a Court of law is barred under the provision of section 195 (1) (c) of the Code of Criminal Procedure, the impugned notice issued by the respondent No. 5 CID Inspector to unnecesarily harass the petitioner to prevent her from proceeding with the legal process for getting delivery of possession of the disputed building and hence the impugned notice is without lawful authority and is of no legal effect.

196. Prosecution for offences against the State.—No Court shall take cognizance of any offence punishable under Chapter VI or IX A of the Penal Code (except section 127), or punishable under section 108A, or section 153A. or section 294A, or section 295A, or section 505 of the same Code, unless

upon complaint made by order of, or under authority from the Government, or some officers empowered in this behalf by the Government.

Scope and application—The object of this section is to prevent unauthorised persons from intruding in State affairs by instituting State prosecutions and to secure that such prosecutions shall only be instituted under the authority of the Government (38 Cal 559). This section does not control the powers of a Magistrate under the Code, but only prevents a court from taking cognizance of certain offences without there being a complaint made by the Government (AIR 1939 All. 682). Cognizance in cases coming under this section can only be taken on a complaint sanctioned by the authorities mentioned in the section and by a prescribed person. The non compliance in the initiation of proceedings goes to the root of the entire matter. Sanction of the Government for prosecution must be strictly proved. Prosecution under this section is illegal in the absence of sanction (AIR 1937 Cal 99, 1979 P Cr. LJ 758). Sanction must be given before the proceedings are started (11 Cr. LJ 453). A complaint under this section must fulfil the requirement of definition of a complaint under section 4 (1) (h). It must set out the facts constituting the alleged offence. If such facts are not stated the proceedings are liable to be quashed (13 Cr. LJ 609, 40 DLR 226 (AD), 8 BCR 162 (AD)).

1969 P. Cr. L.J 73—Kh. Muhammad Rafique Vs. The State—Section 257—Whether order passed under section 257 interlocutory and not liable to be reviewed. Section 124A read with Criminal Procedure Code. Sections 196 & 257—Offence under section 124A P. C. Home Secretary to Provincial Government signing order of complaint, on behalf of Provincial Government—Summoning of Home Secretary for examination not necessary—Order of Magistrate refusing to issue process under section 257, Cr. P. C not interfered with by Supreme Court.

1969 P. C. LJ 120—Jafar Ali Vs. The State—Petitioner challanged for offence under section 124A P. C—Complaint not made by Central or Provincial Government as required under

section 196 Cr. P. C—Trial Court, held, could not take cognizance of offence without compliance with provisions of section 196, Cr. P. C—Order of trial Court remanding petitioner to jail custody, without jurisdiction—Clear case for grant of bail to petitioner.

20 BLD (HC) 268—Shamsuddin Ahmed and others Vs. The State and another—Section 196 of the Code provides that no Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Penal Code (except section 127), or punishable under section 108A, or section 153A or section 294A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Covernment, or some officer empowered in this behalf by the Government.

196A. Prosecution for certain Classes of criminal conspiracy.—No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Penal Code—

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the Government or some officer empowered in this behalf by the Government, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizance offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the Government, or the Chief Metropolitan Magistrate, or a District Magistrate empowered in this behalf by the Government has, by order in writing, consented to the initiation of the proceedings :

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary.

Scope and application—This section is intended to check that prosecutions for the offence are not started in cases

which are not of sufficiently serious in nature. The commission of a cognizable offence punishable with death, imprisonment for life etc. and not covered by section 196 is not included in section 196A. No sanction is necessary for prosecution of a criminal conspiracy having its objects the commission of such an offence (AIR 1950 Cal. 55). The jurisdiction of the Court to take cognizance of an offence of conspiracy depends upon the object of the conspiracy (AIR 1939 Bom. 129). The want of sanction under this section is fatal to the proceedings and the conviction must be set aside as illegal (AIR 1929 Cal. 754).

7 DLR 566—Abdus Sobhan Vs. The Crown—Where an order on its face show that District Magistrate in effect sanctioned prosecution, the trial is valid.

3 DLR 453—Tofail Ahmed Vs. Crown—If a charge is framed in respect of only falsification of accounts and for no other offence, then under the provisions of section 196A no court would take cognizance of the offence of criminal conspiracy unless the Government consented to the initiation of the proceedings.

196B. Preliminary inquiry in certain cases.—In the case of any offence in respect of which the provisions of section 196 or section 196A apply, the Chief Metropolitan Magistrate or District Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, sub-section (3).

197. Prosecution of Judges and public servents.—(1) When any person who is a Judge within the meaning of section 19 of the Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Government.

(2) **Power of Government as to prosecution.**—The Government may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted and may specify the Court before which the trial is to be held.

Scope and application—The object of this section is to guard against vexatious proceeding against Judges, Magistrate and public servants and to secure the opinion of the superior authority whether it is desirable that there should be a prosecution. A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. The priviledge of immunity from prosecution without sanction extends only to acts which can be shown to be done in the discharge of official duty, or to purport to be done in such discharge but an offence arising of official position by an act not purporting to be official does not require sanction under section 197. The material words of section 197, merely mean what they say. The Government which has complete control over its officials while engaged in the performance of their official functions, is by that section, also empowered to deal at its option with matters of excess in the discharge of those functions, Provided that the excess is within the scope of those functions, and the behaviour cannot be thought to constitute an independent injury or offence falling within the ordinary law and wholly outside the departmental authority of the Government. This section does not bar the making of a complaint or the submitting of a police report, but only bars a Magistrate from taking cognizance of the offence on such complaint or such report or in any other way without sanction (AIR 1945 Cal. 585). A sanction under this section must specify the offence for which the prosecution should be started. The prosecution must place before the court proof of the very order granting the sanction and not proof of the fact that the sanction has been granted (AIR 1952 Ori. 220 and 5 PLD 321).

38 DLR 343—Sudhir Das Gupta Vs. Bhupal Chandra Chowdhury—It is not every offence committed by a public

servant that requires sanction for prosecution under section 197 (1) of the Code of Criminal Procedure nor even every act done by him while he is actually engaged in the performance of his official duties but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary (Ref : 40 DLR 385, 9 BLD 144, 8 BLD 246).

37 DLR 167—Shafiqur Rahman Vs. State—Unless a person is a public servant not removable except with the Government sanction, but against his prosecution cannot be invoked (Ref : 6 BLD 69, 28 DLR 452, 1 BSCD 108).

5 BCR 184—Muqbul Ahmed Vs. Hamidul Bari—Prosecution against a Public Servant for any offence without any previous sanction of the Government is unauthorised and without jurisdiction. Section 197 of the Code of Criminal Procedure is applicable to the persent case and taking cognizance of offence under section 55 of the Industrial Relations Ordinance against the petitioners is fully incompetent and without jurisdiction. Labour Court trying an offence under the Industrial Relations Ordinance is deemed to be a Court of Sessions under the Code of Criminal Procedure and is therefore inferior to High Court Division for the purpose of Section 561A Cr. P. C (Ref : 7 BLD 108).

2 BCR 4—Rokeya Begum Vs. Shafiqur Rahman—No sanction under section 197 Cr. P. C is necessary for taking cognizance of the offence alleged in the case, even if the police officer and police constables involved committed the offences while acting or purporting to act in the discharge of official duty. Protection of section 197 Cr. P. C is not available to the accused police officials as is available to other public servants (Ref : 3 DLR 1 PC, 2 BCR 369).

29 DLR 224 (SC)—Mansur Ali Ahmed Vs. Bangladesh—The offence exclusively triable by a Special Judge the Magistrate had no jurisdiction to take cognizance of offence under section 420 and 511 of the P. C (Ref : 1 BSCD 109, 8 PLD 649 Lah., 14 DLR 248).

28 DLR 181 (SC)—Rashiduzzaman Vs. Bahauddin Ahmed—Protection afforded by section 197 extends to acts done or purported to have done in discharge of duty. Circumstances of the case make it clear what the accused police-officer did was in the discharge of his official duty. No prosecution is permissible without sanction (Ref : 12 DLR 103 (SC), 13 DLR 176 (SC), 9 DLR 594, 6 DLR 138).

26 DLR 17—M.A. Motaleb Vs M.A. Ahmed—For prosecution no sanction was necessary and under section 197 no bar, he, when discharging the function of a trustee of the trust fund, was not a public servant within the meaning of section 21 of the Penal Code [Ref : 23 DLR 8 (WP) Karachi].

18 DLR 412—Rakanuddin Bhuiya Vs. The State—Criminal act such as outraging the modesty of a woman and killing a man while the culprit (a Government servant) was being chased, has no connection with acts done or purported to be done in the discharge of public duty (Ref : 6 DLR 152).

10 DLR 12 (SC)—Syed Ahmed Vs The State—A Magistrate at any stage of the proceeding, can come to the conclusion that sanction for some or all of the offences is necessary. In respect of the offences for which sanction is not necessary, the Magistrate can proceed with the trial in respect of them (Ref : 10 DLR 17 (SC)).

8 DLR 66 FC—Lakshmi Narayan Vs. The State—Provisions of sections of the Criminal Law (Amendment) Act (XIX of 1948), being Special Act exclude the provisions of section 197 which is a general act.

Revision—Where an order dismissing a complaint on the ground that previous sanction for prosecution of an accused has not been obtained is made it is open to the superior court to order further inquiry under section 435 and 436 Cr. P. C. The power of granting or refusing sanction lies only with the Government. Courts will have no power to interfere in the matter (Ref : 5 PLD 8 JK.).

18 BLD (HC) 551—Md. Abdul Awal and another Vs. The State—When an offence is alleged to have been committed by a public servant not in discharge of his official duty, but as a

private citizen and he is not charged under the provision of the Criminal Law Amendment Act,1958, but under the Penal Code, he is not entitled to the protection under section 197 Cr. P.C and as such no sanction is necessary for his prosecution. (Ref : 50 DLR 483).

51 DLR 25—Kazi Obaidul Haque Vs. State—Previous sanction of the Government is required under section 197 of the Code of Criminal Procedure before commencing any criminal prosecution against the petitioner.

197A. Omitted

198. Prosecution for breach of contract, defamation and offences against marriage.—No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence :

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf :

Provided further that where the husband aggrieved by an offence under section 494 of the said Code is serving in any of the armed forces of Bangladesh under conditions which are certified by the Commanding Officer as procluding him from obtaining leave of absence to enable him to make a complaint in person, some other persons authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.

Scope and application—The offences referred to in this section are of a private character and the object of the section is to limit the persons by whom proceedings can be initiated and to see that it is not in the power of any and everybody to drag such offences into a Court of Justice (AIR 1938 Sind.

141). What section 198 does is to prohibit taking of cognizance except upon complaint made by the persons aggrieved. The complaint contemplated by the section is a complaint made under section 190 (1) (a). A complaint of bigamy can be preferred by the person with whom the second ceremony is gone through or by other persons aggrieved e.g. the husband (by the first marriage) of the woman committing bigamy (AIR 1943 Pat 212). The father, mother, or brother of the first husband or second husband or the father of woman who contracts the bigamous marriage have been held not competent to prefer a complaint of bigamy under this section (13 Cr. LJ 204). Wife can complain against the husband and vice versa if one defames the other (AIR 1957 Mad. 339). A person who has been aggrieved by a defamatory statement can file a complaint. The right to complain about defamation belongs not only to the person defamed but also to others who are affected by defamation (AIR 1928 Nag. 558). The husband of a woman who has been defamed by the imputation of unchastity to her can complain about the defamation (AIR 1924 Lah. 559). Section 198 modifies the general rule by providing that the offence of defamation, etc. should not be taken cognizance of by any court except upon a complaint made by the person aggrieved by the defamation etc. In the case of an offence bigamy committed by the wife, the husband is the only person aggrieved by such offence and he alone can make the complaint. The father of the husband is not the 'person aggrieved.'

41 DLR 180—Mr. A. Y. Masihuzzaman Vs. Shah Alam—There is no bar an individual to make a complaint in respect to alleged defamatory statement made in a judicial proceedings. Section 198 Cr. P. C enables an individual to file such complaint.

23 DLR 14 (WP)—Hassan Razaki Vs. Mst. Meherunnessa Meher—Parents of girls living with them when defamed scandalously are persons aggrieved within the meaning of section 198 and as such can file a complaint in court under section 500 P. C (Ref : 5 PLD 72 BJ).

Effect of want of complaint—This section regulates the competence of the court and bars its jurisdiction except in compliance therewith (AIR 1955 (SC) 196). The provisions of the section are mandatory and judicial proceedings held in the absence of a complaint by the aggrieved person are illegal (AIR 1960 (SC) 82). The leave of the court is necessary for compounding a complaint made on behalf of another (AIR 1938 Lah. 379).

199. Prosecution for adultery or enticing a married woman.—No Court shall take cognizance of an offence under section 497 or section 498 of the Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed;

Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic or is from sickess or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf;

Provided further that where such husband is serving in any of the armed forces of Bangladesh under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person and where for any reason no complaint has been made by a person having care of the woman as aforesaid, some other person authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf;

Scope and application—The object of this section is to see that in the case of offences which are purely of a private character the matter is not dragged to the court, except when the party immediately affected cares to bring the matter before the court (AIR 1938 Sind 141). Where a person proposes to complain as the husband under this section the factum and validity of the marriage must be proved (PLD 1961 Kar. 1950). In the absence of a complaint by the husband or other person mentioned in the section the proceedings will be illegal (AIR

1935 Pat 357). The only person who can prefer a complaint of an offence referred to in this section is the husband of the woman. The husband is entitled to make the complaint even though the marriage has been dissolved before the complaint (23 Cr. LJ 462). In the absence of the husband, the complaint may be made by any person having the care of the woman. Thus the mother of the husband who was in charge of the wife during the absence of the husband is competent to prefer a complaint of an offence under section 498 Penal Code against the person who adbucts the wife (24 Cr. LJ 780). Where the brother of the husband of the woman instituted a complaint under section 498 of the Penal Code alleging that he had authority from the husband to prefer the complaint, but after taking evidence the Magistrate held that the complaint had no authority and acquitted the accused. Subsequently the husband himself instituted the complaint. It was held that the previous acquittal was no bar to a fresh trial (16 Cr. LJ 657).

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—Adultery and Enticing of a married woman—Bar of taking cognizance in such offences. The bar against taking cognizance of such offences otherwise than upon a complaint by the husband is total and complete.

199A. Objection by lawful guardian to complaint by person other than aggrieved person.—When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.

199B. Form of authorisation under second proviso to section 198 or 199.—(1) The authorisation of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by the officer referred to in the said provisos, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(2) Any document purporting to be such an authorisation and complying with the provisions of sub-section (1), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.

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CHAPTER—XVI

OF COMPLAINTS TO MAGISTRATES

200. Examination of complainant.—A Magistrate taking cognizance of an offence on complaint shall at once examine upon oath the complainant and as such of the witness present, if any, as he may consider necessary, and the substance of the examination shall be reduced to writing and shall be signed by the complainant or witness so examined, and also by the Magistrate.

Provided as follows :—

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require such examination before transferring the case under section 192;

(aa) when the complaint is made in writing nothing herein contained shall be deemed to require such examination in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties.

(b) Omitted.

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant and witness if any, the Magistrate to whom it is so transferred shall not be bound to re-examine them.

Scope and application—The Chapter (sections 200 to 203) lays down the procedure to deal with complaints made by private persons. In cases of complaints by a court, or by a public servant purporting to act in the discharge of his official duties, no examination is necessary under this section. Where the complaint is not by a court, nor can it be treated as one by a public servant, the complainant ought to be examined (AIR 1936 Pat 145). On analysis of this section it appears that the object of an examination under this section is three fold : (1) to ascertain the facts constituting an offence, (ii) to prevent abuse of process resulting in wastage of time of the court and

harassment to the accused, and (iii) to help the Magistrate to judge if there are sufficient grounds calling for investigation and for proceeding with the case (13 Cr. LJ 704). If a Magistrate takes cognizance of an offence on complaint he must (i) examine upon oath the complainant and the witnesses present, if any, and (ii) reduce its substance to writing (1957 Cr. LJ 673). It is obligatory to examine the witnesses present and a summary dismissal without examining them is not legal. The failure to examine the complainant renders subsequent proceedings invalid (51 Cr. LJ 1290). If the complaint is in writing, it must be signed by the complainant. A complaint cannot be accepted if it is not signed by him (42 Cal. 18). The substance of the examination must be signed by the complainant. Unless it is signed, the Magistrate cannot take cognizance of the complaint. One of the main object of section 200 Cr. P. C is to protect the public against false frivolous and vexatious complaints filed against them in criminal courts and the Magistrates must not lightly accept written complaints and proceed to issue processes until they had thoroughly shifted the allegations made against the accused and were satisfied that a prima facie case had been made out against those who were accused of criminal offences.

14 BLD 36 (AD)—S.A. Sultan Vs. The State—The purpose examination under the Section is to see whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can only be determined at the trial and not at the stage of enquiry.

43 DLR 417—Jamir Sheikh Vs. Fakir Md. A. Wahab—Petition of complaint contains allegations under sections 295A/298/109 Penal Code out of which, to initiate and continue with the proceeding, compliance of the provision of section 196 Cr. P. C in respect of offence under section 295A P. C is necessary but no compliance is necessary in respect of offences under section 258/109 P. C. Interference by way of quashing the entire proceeding is not called for. Name of the petitioner finds mentioned in the petition of complaint but on a reading of the same his complicity with commission of

offence could not be traced out. The proceeding as against him is liable to be quashed in terms of the principles enunciated.

39 DLR 137—Elahi Baksh Vs. State—Failure to examine a complainant—Serious irregularity. It must however be seen whether the failure has prejudicially affected the complainant. A failure to follow the provisions of section 200 in respect of examination of the complainant does not entail invalidation of the proceedings taken.

38 DLR 52 (AD)—Delwar Ali Khan Vs. Sajedul Haque—When the special Act is silent or prescribes no procedure of its own for investigation, enquiry or trying or otherwise dealing with such offence, procedures as laid down in the Code shall be applicable. [Printing press and publication (Declaration and Registration Act) 23 of 73].

7 BLD 164—Shah Jahan Vs. Atiqur Rahman—Examination of the complainant under section 200 Cr. P. C is not mere form but an intelligent enquiry into the subject matter of the complaint carried far enough to enable the Magistrate to exercise his Judgment as to whether there is or there is no sufficient ground for proceeding.

37 DLR 227—Mihir Lal Saha Poddar Vs. Zhunu Rani Saha—Examination of the complainant on oath, when taking cognizance of an offence under section 200 Cr. P. C mandatory. Failure to do so renders the proceeding liable to be quashed. The complainant was not examined upon oath before taking cognizance as required mandatorily under section 200 Cr. P. C Cognizance in this case has been taken illegally in violation of section 200 Cr. P. C and consequently proceeding is thus not sustainable in law (Ref : 9 DLR 362).

1 BCR 235 (SC)—Dr. Jamshed Bakht Vs. Ameenur Rashid Chowdhury—It is the filing of the complaint in the court which set the ball rolling. Such expressions as 'initial statement on oath,' 'examination of complainant on oath,' or 'taking cognizance of the offence' characterise the stages of a criminal proceeding subsequent to the filing of the complaint. A complaint filed in the criminal court is, therefore, the basis.

34 DLR 424—Nazimuddin Ahmed Vs. The State—Under section 200 Cr. P. C any Magistrate taking cognizance of an offence may examine the complainant and the witnesses present upon oath and after reducing the substance of such examination may issue processes for the attendance of the accused in accordance with provisions of section 204 (1) Cr. P. C if in the opinion of the Magistrate taking cognizance of the offence there is sufficient grounds for proceeding (Ref : 11 DLR 77 (WP)).

34 DLR 237—Gour Chandra Samadder Vs. The State—The words 'if any' occurring in section 200 Cr. P. C make it clear that the Sub-Divisional Magistrate shall examine witnesses if they are present, but he commits no illegality if he summons the accused persons only after examining the complainant in the absence of any other witness (Ref : 3 BLD 216).

29 DLR 25—Cherag Ali Vs. The State—When the police do not recommend prosecution of the accused and submitted final report the Magistrate may direct a judicial inquiry and if in that inquiry the complainant deposes then he can take cognizance.

28 DLR 389—Noor Mohammad Mandal Vs. Md. Abul Hossain—A complaint cannot be sent for judicial inquiry or investigation under section 202 (1) Cr. P. C unless the complainant has been examined on oath. Order for judicial inquiry under section 202 Cr. P. C without examining the complainant under section 200 Cr. P.. C is contrary to law and the proceeding of such inquiry and order passed thereon are void (Ref : 11 DLR 134, 11 DLR 9 (WP), 2 DLR 77, 28 DLR 1, 12 DLR 489, 20 DLR 590).

27 DLR 111—Khurshed Alam Vs. The State—It is open to an informant to submit a naraji petition against a final report submitted by the police before the Magistrate who may treat such a petition as a petition of complaint, take cognizance under section 190 (1) (a) of the Code and examine the petitioner under section 200 of the Code.

25 DLR 471—Akhter Hossain Molla Vs. Abdur Rashid Molla—Law does not require any examination of a public servant when acting under section 200 (aa).

19 DLR 242 (SC)—Md. Alam Vs. The State—Trial before the Magistrate commences when the Magistrate takes cognizance of the case.

48 DLR 299—Kazi Rashidur Rahman Vs. Md Giasuddin and others—There is no question of prejudice to the accused-petitioner due to the irregularity of non-examination of the complainant by the Magistrate under this section before he transferred the case for judicial enquiry. (Ref. 1 MLR (AD) 57).

48 DLR 327—Nurul Hoque Vs. Bazal Ahmed and 3 others—A second prosecution of the same accused is permissible if his order of discharge was not passed earlier on merits.

48 DLR 327—Nurul Hoque Vs. Bazal Ahmed and 3 others—If cognizance is taken on the basis of a fresh complaint there can be no objection to the proceedings at all and in a proper case an application for revival also may amount to a fresh complaint.

48 DLR 327—Nurul Hoque Vs. Bazal Ahmed and 3 others—A Naraji petition is a fresh complaint and a Magistrate is competent to take cognizance on the basis of a naraji petition by complying with the requirements of the Code.

By passing the order of discharge of the accused petitioner from custody at the instance of the police the Magistrate did not become functus officio and his order of discharge of the accused-petitioner from the custody at the instance of the police cannot operate as a bar to take cognizance against the accused petitioner.

50 DLR 291—Shinepukur Holding Ltd Vs. Security Exchange Commission—Since there is no requirement of law to record reasons for taking cognizance we find no illegality in those orders on that count. (Ref : 4 BLT (HC) 144).

1 MLR (AD) 277—Yakub Ali Vs. The State Section 339C. Application of new amended Act No XLII of 1992 to pending—The Code of Criminal Procedure, 1898 (V of 1898) Section 200, 156(3), 561A—The Magistrate may without taking cognizance send a petition of complaint to the police for holding investigation treating the same as F.I.R. in a cognizable case under section 156(3). But once he takes

cognizance under section 200 he can not direct the Police to treat the petition of complaint as an F.I.R. and hold investigation on the basis thereof.

50 DLR 291—Shinepukur Holding Ltd Vs. Security Exchange Commission—Use of the word "report" in this section in contradiction to the word 'complaint" used in section 200 of the Code appears to be significant. The word "report" presupposes enquiry or investigation and without making enquiry or investigation a report cannot be prepared and submitted. (Ref. 18 BLD (HC) 61).

51 DLR 408—Jalaluddin Bhuiyan Vs. Abdur Rouf and others—Both the Magistrate and the Sessions Judge committed error of law resulting in miscarriage of justice by rejecting the Naraji petition and discharging the accused opposite parties on the basis of the police report. The Magistrate ought to have held an inquiry on the Naraji petition before rejecting the case.

48 DLR 529—Dilu alias Delwar Hossain Vs. State, represented by the Deputy Commissioner—Judicial inquiry held after police report and upon a naraji petition is permissible under provision of section 202 of the Code and it does not amount to re-opening of a case.

After receiving the petition of complaint the learned Magistrate proceeded under section 202 of the Code of Criminal Procedure and himself held the judicial inquiry and in that inquiry as the complainant was examined, the action of the learned Magistrate has not vitiated the proceedings in any way for not examining the complainant immediately after filing of Naraji petition. In view of our discussion above, we therefore find no merit in this Rule. (Ref. 4 BLT (HC) 144).

50 DLR 291—Shine Pukur Holding Ltd. Vs. SEC—From the language of sub-section (IA) and (1B) of section 204 of the Code it is clear that taking of cognizance under section 200 of the Code will not be illegal if list of witnesses and copy of the complaint are not filed before issuance of the process of warrant of arrest or Pummons. [Ref ; 3 BLC 148]

52 DLR (HC) 222—Abul Hossain Vs. State—When a naraji petition was filed the same petition should have been treated as petition of complaint and the learned Magistrate was required to act in accordance with provisions laid down in section 200 or 202 of the Cr.P.C.

4 BLT (HC) 144—Delwar Hossain Vs. The State—After receiving the petition of complaint the learned Magistrate proceeded under section 202 of the Code of Criminal Procedure and himself held the judicial inquiry and in that inquiry the complainant was examined, the action of the learned Magistrate has not vitiated the proceedings in any way to not examining the complainant immediately after filing of Naraji Petition.

4 BLT (AD) 257—Md. Alim Vs. Noor Mohammad Bepari & Anr—Cognizance without examining the Complainant— In the Present case cognizance was taken on the basis of the judicial inquiry and as such examination of the complainant was not necessary— Petition is dismissed.

17 DLR 626 (SC)—Shamim Vs. The State—Examination of the complainant before issuing process is an irregularity curable under section 537 of the Code, unless failure to do so results in prejudice (Ref : 10 DLR 413, 9 DLR 372, 2 DLR 141, 21 DLR 284 (WP), 37 DLR 223).

12 DLR 489—Azizur Rahman Vs. The State—Complaint received under section 190 (a) and the complainant is examined under section 200; after that referring the case under section 156 (3) for police investigation is illegal—If any enquiry is desired, it can be only under section 202. Stay of further proceedings ordered by a superior Court—Subordinate Court bound to respect it.

11 DLR 42 (WP)—The State Vs. Ali Mohammad—Issuing of process is not a part of taking cognizance of offence.

16 BLD (HC) 283—Abu Bakar and others Vs. The State—Examination of the complainant under section 200 Cr. P.C. is essential when a complaint is filed before the Magistrate. A 'naraji' petition is regarded as a fresh complaint and as such

the examination of the complainant under Section 200 Cr. P.C. is also necessary.

Death of complainant, effect—As there is no abatement of a criminal case on the death of the complainant, a fresh complaint on the same facts need not be made but the old complaint must be treated as pending and proceeded with to its disposal (Ref : 18 CWN 1291, 22 DLR 244, 43 DLR 60).

Revision—Revision under section 435 and 439A Cr. P. C lies before the Sessions Judge against the order of taking cognizance.

53 DLR 566—Golam Rahman (MD) Vs. Md. Bazlur Rahman (Babu) and other (Criminal)—Sections 200 & 190—An enquiry or investigation can be directed by the Magistrate under section 202 of the Code in order to ascertain the nature of the allegation and to decide whether cognizance of the offence should be taken because till then he is in seisin of the case. It is wrong to say that simply because the case was started on a petition of complaint, the Special Tribunal constituted under the Special Powers Act would have no jurisdiction to try the case, if it is otherwise triable under the Act.

8 BLC 166 (AD)—Abdus Sabur and another Vs. State—Section 200, 202 and 561A—It appears that there is specific allegation in the FIR against the petitioners. The High Court Division rightly held that the Magistrate did not comply with the provisions of section 200, or 202 of the Cr.P.C and rejected the naraji petition in an arbitrary manner.[Ref:23 BLD 106].

4 BLC 74—Nurul Hoque and others Vs. State and another—Without taking cognizance the petition of complaint having been straightaway sent to the local police by the learned Chief Metropoliton Magistrate for treating the same as FIR where section 200 of the Code has no manner of application.

201. Procedure by Magistrate not competent to take cognizance of the case.—(1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

Scope and application—A Magistrate who has no local jurisdiction to enquire into or try an offence cannot take cognizance of it. He should not examine the complainant in such a case. The want of competency contemplated by this section may be due to (a) the Magistrate not being empowered under section 190, (a) (b) want of territorial jurisdiction under section 177 etc. or (c) want of proper sanction under section 190 to 199, or (d) absence of complaint under section 195. The section is applicable at any stage of proceedings.

16 DLR 334—The Supdt, and Remembrancer of legal Affairs to the Government of East Pakistan Vs. Sokel—When a complaint is laid before a court which has no territorial jurisdiction to entertain it the proper course to follow is to return the complaint for presentation to the proper court under section 201 Cr. P. C and not to acquit the accused.

202. Postponment for issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint:

Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the provisions of the section 200 have been complied with;

Provided further that where it appears to the Magistrate that the offence complained of is triable exclusively by a Court of Session, the Magistrate may postpone the issue of process for compelling the attendance of the person complained against and may make or cause to be made an inquiry or

investigation as mentioned in this sub-section for the purpose of ascertaining the truth or falsehood of the complaint.

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer-in-charge of a police-station, except that he shall not have power to arrest without warrant.

(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(2B) Where the police submits the final report, the Magistrate shall be competent to accept such report and discharge the accused.

Scope and application—This section can be applied by a Magistrate in two cases : first, on receipt of a complaint of an offence of which he is authorised to take cognizance; and, secondly on receipt of a complaint of an offence which has been transferred to him under section 192 Cr. P. C. This section applies only to a complaint of an offence and inapplicable to proceeding in maintenance. The purpose of inquiry is restricted only to the ascertainment of the truth or falsehood of the complaint. This section does not apply when cognizance is taken otherwise than on complaint i. e. Information of police report (17 CWN 824). This section comes into play when the Magistrate after examining the complainant and his witnesses present, if any, has reasons for distrust and thinks that he would not be justified in issuing process without taking some further steps to ascertain whether the allegations are prima facie true or not. When he decides to postpone the issue of process, he should either (a) himself make an inquiry, or (b) direct an investigation by (i) the police, or (ii) by any other fit private person. The object of the provisions of section 202 is to enable the Magistrate to form

an opinion as to whether process should be issued or not. After acting under section 202 and directing an enquiry, Magistrate cannot transfer the case to another Magistrate for being dealt with under section 203 or 204 (29 CWN 508). When process has once issued against the accused there can be no order for inquiry (51 CWN 933). Direction for investigation without previous examination of the complainant and the witnesses present, if any except in complaints made by a court will vitiate the proceedings. Examination of the complainant and also witnesses present under section 200 is obligatory. It is not necessary that a Magistrate should call for an inquiry under this section in every case (21 Cr. LJ 220). The scope of inquiry is only to find out whether there is a prima facie case. It is entirely within the discretion of the Magistrate to decide whether or not an inquiry or investigation under this section should be ordered. Justice should not only be done but it should appear to have been done and, therefore, the court concerned must nevertheless guard against any suspicion of the assumption of the role either of a prosecutor or of acting in favour of the defence (1968 P. Cr. LJ 1526). If the complaint is made against some individuals jointly, the Magistrate has discretion to issue processes against few. The fact that the Magistrate has issued processes against two of the accused persons would not deprive him of his power to make a preliminary inquiry in respect of the offence alleged against the third accused under section 202 (41 Cr. LJ 312). Special Judge appointed under Criminal Law (Amendment) Act, 1958 cannot act under section 202 and held a preliminary inquiry (PLD 1962 Kar. 738, AIR 1962 Bom. 205) when it has been held that the Special Judge can invoke section 202. A person with regard to whom a preliminary inquiry under section 202 is being held is not entitled by any rule of law to intervene. But he may instruct a legal practitioner to watch the case on his behalf and with the leave of the court to assist the court in making the investigation (AIR 1926 Sind 188, 8 Cr. LJ 20). Sub-section (2A) proviso is newly added. The court may also direct investigation by a police-officer or any other person in a case

where the offence is exclusively triable by the Court of Session. The court can postpone the issue of process and is competent to accept such report and discharge the accused. Further, he is empowered under this clause to call upon the complainant to produce all his witnesses and to examine them on oath. This is necessitated by abolition of the committal inquiries under Chapter XVIII and to provide some sort of scrutiny by the Magistrate himself in complaint case before he sends the case to the Court of Session under section 205C Cr. P. C.

54 DLR 88 (HC)—Md Hossain,Advocate Vs. Quamrul Islam and Others—Either there must be some information before police officer about commission of a cognizable offence or there must be a formal complaint before a Magiatrate for starting or holding investigation in a case of cognizable offence.

42 DLR 240—Syed Ahmed Vs. Habibur Rahman—Under section 202 (1) and proviso to section 202 (2A) of the Cr. P. C in a case exclusively triable by the Court of Sessions, a Magistrate for the purpose of ascertaining the truth or falsehood of the complaint is to consider the evidence in order to find whether prima facie case is made out or not, but he cannot assess the evidence as if in a trial. Sessions Judge re-assessed the evidence recorded by Magistrate under section 202 (2A) of the Cr. P. C and apparently took cognizance of the case himself against the petitioners directing further enquiry into the matter by way of securing their attendance and ordering them to be sent up (under section 205 Cr. P. C) before his court to stand trial—Held—Order of the learned Sessions Judge is not contemplated in section 436 of the Code of Criminal Procedure and as such he acted illegally in interfering with the order of the learned Magistrate as such (Ref 9 BLD 227).

42 DLR 49—Shah Alam Chowdhury Vs. The State—Interpretation of statute—Whether order of discharge of the accused by the Magistrate or receipt of final report (true) is in a way like releasing the accused by the Investigating Officer under section 169 Cr. P. C on the ground of deficiency of evidence (Ref: 10 BCR 107).

1976 (SC) 380—Devarapalli Lakshminarayana Reddy Vs. Narayana Reddy—Section 202 (1)—First Proviso clause (a) and section 156 (3)—Complaint disclosing an offence exclusively triable by court of session—Request by Magistrate to police to further investigate under section 156 (3) not improper when no cognizance of the offence taken—Section 156 (3) independent of section 202—Cognizance when taken explained.

7 BCR 168 (AD)—Md. Tarab Ali Biswas Vs. The State—Prima facie case against the accused persons on the basis of examination of 7 witnesses through a judicial enquiry by a Magistrate to whom the case was sent by the S.D.M after examination of the complainant. No exception can be taken to this. The observation by the High Court Division is unwarranted No interference is called for.

1969 P.Cr. LJ 42 (SC)—Shakhawat Ullah Kazi Vs. The State—Magistrate, on private complaint, drawing up proceedings under section 144 Cr. P. C and after lapse of statutory life of the order under section 144 issuing summons to accused for offences under sections 147, 431 P.C—Contention that order passed by Magistrate was illegal because complainant had not been examined under section 202 Cr. P. C. Held, cognizance could lawfully be taken by Magistrate under section 190 (1) (C) Cr. P. C and examination of accused in circumstance, was not necessary.

23 BLD 420 (HC)—Hasanul Hoq Inu Vs. The State—Magiatrate dismissing a complaint under section 203 of the Cr.P.C has to exercise his own independent Judgment on receipt of report under section 203 and cannot rely on the recommendation made under section 202 of Cr.P.C by the inquiry Magistrate.

7 BLD 11—Twahid Khan Vs. The State—Fresh complaint on the self-same occurrence when not a bar—The naraji petition was kept on record and no order was passed even after receipt of charge-sheet—Since no action was taken on the naraji petition, it, may be treated as dismissed—So there was no bar for the informant to file a fresh complaint on the self-same occurrence.

5 BCR 176—Nurul Huq Bahadur Vs. Bibi Sakina—Adultery under section 497 of the Penal Code cannot be committed by unmarried women, prostitutes and widows. The offence is committed when the victim woman is the wife of a man. A complaint cannot be sent for Judicial enquiry or investigation under section 202 (1) Cr. P. C unless the complainant has been examined on oath (Ref : 37 DLR 335, 5 BLD 269).

36 DLR 148—A. Kader Chowdhury Vs. The State—Fresh complaint against the same accused permissible in appropriate cases. Although the same case cannot be revived by the Magistrate against the accused persons after they are discharged by him, yet there is no bar in an appropriate case in entertaining a fresh complaint in respect of the same occurrence.

36 DLR 58 (SC)—Abdus Salam Master Vs. The State—Fresh complaint may also be entertained if the order of dismissal of the previous complaint had been passed on misunderstanding of the scope and extent of enquiry under section 202 Cr. P. C. Magistrate trying the case should ignore the police assessment of the witnesses statement which is not police function but of the court trying the case. 'Witnesses' statement before Magistrate holding inquiry under section 202 may implicate person not named before the I. O. When naraji petition is filed against police final report, the Magistrate may take cognizance after examination of the complainant or may follow the procedure under section 202 (Ref : 35 DLR 140).

35 DLR 207—Harun Mir. Vs. The State—On receipt of a complaint, Magistrate directs an enquiry by the police to ascertain its truth or otherwise. But before receipt of the inquiry report he took cognizance of the case and issued summons against the accused. This is illegal (Ref : 1 BCR 235 (SC)).

35 DLR 176—Md. Showkat Rabbani Vs. Md. Showkat Osmani—In an Inquiry under section 202 Cr. P. C a Magistrate has no jurisdiction to ask the person complained against to take part in any manner in the inquiry. Such a procedure is entirely unwarranted by the Code of Criminal Procedure (Ref : 5 DLR 112).

34 DLR 424—Nazimuddin Ahmed Vs. State—Expression 'an inquiry' also signifies more than one inquiry for the purpose of ascertaining truth or otherwise of the complaint. If, therefore, the first inquiry is found to be unsatisfactory, a second enquiry may validly be held. If the Magistrate finds the complaint to be true and if he finds that the offence is triable by Sessions Court, there is no scope for second inquiry but he shall proceed under section 200 (2A). (Ref : 14 DLR 517, 9 DLR 69).

33 DLR 8—Suruj Meah Vs. Mahimullah—Under the proviso added in sub-section (2A) of section 202 Cr. P. C by the Law Reforms Ordinance, 1978 when it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall can upon the complainant to produce all his witnesses and examine them on oath and thereafter he is to send the case to the Court of Session in terms of section 205C Cr. P. C. It is not for the Magistrate to weigh and shift the evidence, relating to an offence triable exclusively by the Court of Session (Ref : 33 DLR 89, 10 DLR 413, 1 BLD 52, 1 BCR 18, 18 DLR 295).

25 DLR 198—Efan Vs. The State—Where the trying Magistrate directed an inquiry and report into the accusation made by the complainant, there is no illegality if he, due to circumstances, withdraws his order for inquiry and report and tries the accused and finally convicts him. If, however, there was any irregularity committed, it is curable under section 537 Cr. P. C.

17 DLR 42—Secretary, Sub-divisional Fisherman Co-operative Society Vs. Mukunda Lal Adhikery—When naraji petition has been filed against police report, the trying Magistrate should not have acted on police report without hearing the party concerned in support of his naraji petition.

13 DLR 9—M. N. Mostafa Vs. Zaharat Ara—A Magistrate is competent to direct another Magistrate subordinate to him to make a further inquiry if he is not satisfied with the result of a previous inquiry. There is nothing in terms of section 202 which would prevent further inquiry.

12 DLR 103 (SC)—S. M. H. Rizvi Vs. Abdus Salam—In a case where the initial complaint or report is of such a nature that it is doubtful whether primafacie case of the offences alleged is made out, a Magistrate would be fully within his rights in calling for evidence before deciding that the complaint or report should be rejected.

11 DLR 134 (WP)—Fateh Sher Vs. Khan Yasin Khan—Inquiring authority should give ample opportunity to the complainant to prove his allegation (Ref : 6 DLR 205 (WP)).

6 DLR 138—Aminul Huq Vs. Abdul Wahab—On receipt of a report of an enquiry trial Magistrate must decide to dismiss the case or proceed (Ref : 2 PLD 66BJ).

3 DLR 1 (PC)—Lumbhardar Vs. King—When the order of the Magistrate is attacked on the ground of non-compliance with the requirements of section 202 (1). Held : Such a fault in procedure might have important consequences but that would not take away the Magistrate's jurisdiction to try the accused (Ref : 2 PCR 230).

Revision—When a Magistrate does not act as he should under this section, the aggrieved party is entitled to apply in revision under section 435 and 439A Cr. P. C (39 Cr. LJ 984). Where the inquiry is made by the police in a perfunctory manner, and the report is considered by the Magistrate also in a perfunctory manner the Sessions Judge will interfere (19 Cr. LJ 263). If the Sessions Judge fails to consider it properly, the High Court Division will interfere (19 Cr. LJ 263).

4 BLT (HC) 144—Delwar Hossain Vs. The State—Judicial inquiry is an independent inquiry and as such an enquiry is held u/p of section 202 of the Code and it does not amount to re-opening of a case.

50 DLR 551—Abdul Hai Vs. State—Discharge under the provisions of these sections is of different character than the discharge of the accused under sub-section (2B) of section 202 where discharge is made before taking of the cognizance.

In our view there is no scope for making further enquiry after discharge if the accused under sections 241A or 265C of the Code as the same is made after taking cognizance.

Moreover at the time of hearing under section 241A or under section 265C the court considers the record of the case, the documents submitted therewith and the submissions made by both parties. So, all necessary materials are before the court and as the order is passed on consideration of all such materials, there is no scope for passing any order for holding further inquiry. But there is scope for further enquiry when accused is discharged under the provision of sub-section (2B) of section 202 of the Code as the said order is made before taking of the cognizance.

52 DLR (HC) 583—Abul Kalam Azad (Md) and 2 ors Vs. State and others—Before framing charge, a Magistrate is required to hear the parties and consider documents submitted along with the record of the case by the prosecution.

9 BLC 294—State Vs. Ershad Ali Sikder @ Ershad Sikder—Sections 202(2B),403 and 436—Sections 202(2B) and 436 of the Code debar the prosecution of a person who has been discharged of a case. In other words, it may be said that where there is a finality of an order of discharge in respect of a person such case cannot be re-opened by the Magistrate unless the Superior Courts direct fo further inquiry into the matter.

7 BLC (HC) 164—Moni Begum and another Vs. M. Shamsur Rahman and others (Criminal)—The presence of high Police Officer and police representative during judicial Inquiry to be performed by a Magistrate under section 202 of the Code of Criminal Procedure when the police personnel stand arraigned as accused for commission of crime is absolutely impermissible in the interest of fair inquiry and hearing and also contrary to law, procedure and justice.

22 BLD (HC) 187—Moni begum Vs. Mr. Mohammad Shamsur Rahman—Police Regulations 1943. Regulations 24(a) and 29(d) donot authorise the presence of a Police person or his representative in a Magisterial inquiry against an accusation made by a person against police personnel, nor do the regulations indicate that such presence in necessary.

203. Dismissal of complaint.—The Magistrate before whom a complaint is made or to whom it has been transferred,

may dismiss the complaint, if after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under section 202; there is in his judgment no sufficient ground for proceeding. In such cases he shall briefly record his reasons for so doing.

Scope and application—This section gives large powers to a court to dismiss a complaint without issuing a process. But it does not apply where process 'has been issued' or where the proceeding is not one which is initiated on a 'complaint' (AIR 1931 Lah. 185). The pre-requisite of action under section 203 is an investigation or inquiry under section 202. This section is not dependent on the provision for postponement of process in section 202. The Magistrate shall dismiss the complaint forthwith : (a) if he finds that no offence has been committed, or (b) if he distrusts the statement of the complainant and his witnesses examined and (c) on consideration of the result of inquiry or investigation, if any, under section 202, he thinks that there is no ground for proceeding. Magistrate must exercise independent judgment and not surrender his discretion to police opinion (40 Cr. LJ 807). A dispute of a civil nature though dressed up in criminal garments should be dismissed (28 CWN 831). Dismissal order which remains unreversed is no bar to the re-hearing of the complainant by the same or by another Magistrate. In such cases section 369 Cr. P. C has no application as an order of dismissal under section 203 is not a judgment, nor is section 403 a bar. After dismissal of earlier complainant, a fresh complaint on the same facts to the same Magistrate or to his successor to another Magistrate by the same complainant or by different complainants is not barred although the dismissal order has not been reversed (15 Cr. LJ 28, 40 Cr. LJ 745 FB).

41 DLR 180—Mr. A. Y. Masihuzzaman Vs. Shah Alam—Complaint filed for prosecution of defamation against a party who made such statement in a judicial proceeding—Complaint dismissed under section 203 of the Code of Criminal Procedure without either admitting the complaint petition or examining the complainant and in that view the Court dismissed the case under section 203 Cr. P. C.

8 BCR 157 (AD)—Bangladesh Vs. Yakub Sarder—Question arose whether the Sessions Judge has got power under section 439A of the Code of Criminal Procedure or under any other provision of the Code to direct a Magistrate to send the case to him for trial when the Magistrate dismissed the complaint under section 203 of the Code. Case and cross-case Police has submitted charge-sheet in the cross-case arising out of the same occurrence—Magistrate took the view that when the Police has submitted the charge-sheet in the cross-case started on a First Information Report, he has no power to issue process against the accused cited in the complaint petition—The Complaint was dismissed on an erroneous view of law—The only course for the Sessions Judge was to direct further enquiry under section 436 Cr.P.C (Ref : 8 BLD 180 (AD)).

8 BLD 373—Md. Naimuddin Mondal Vs. The State—Dismissal of complaint—Extent of Magistrate's authority to dismiss—There is no substance in the contention that simply because the allegation is triable by the court of Sessions, the Magistrate cannot disbelieve the complaint and cannot dismiss it—The Magistrate shall be competent to accept final report and discharge the accused even when the offence complained of is triable exclusively by the court of Sessions.

23 DLR 121—Mohammad Meah Vs. The State—Dismissal of the complaint under section 203 Cr. P. C does not mean discharge or acquittal. In such a case of dismissal of complaint, an accused may be proceeded with (Ref : 7 DLR 99 (WP)).

23 DLR 6 (WP)—Md. Farid Vs. The State—Order of a Magistrate on a police report cancelling a case is not a judicial order and as such is not open to revision.

21 DLR 406—Muslim Meah Vs. Monsar Ali Haji—Where the complainant is found to be negligent to appear before the court he should be given ample opportunity, to prove his allegation. Inspite of giving reasonable opportunity if the complainant declines or neglects to appear, the Magistrate may decide whether the complaint should be dismissed or remitted back for inquiry or investigation

18 DLR 295—Ansaruddin Molla Vs. Hamid Molla—Magistrate inquiring under section 202 is not to weigh evidence. The trying Magistrate acting under section 203 has to exercise his independent judgment on receipt of report under section 202. Magistrate even if he wants to act under section 203 Cr. P. C. should exercise his independent judgment.

18 DLR 39 (WP)—Syed Altaf Hossain Shah Vs. The State—Complaint dismissed under section 203, is a matter still at inquiry stage. Trial begins when accused is charged.

14 DLR 511—Abu Vs. Haji Abdul Gani—Trying Magistrate has the power to discharge the accused person. The order is a Judicial order.

13 DLR 9—M. N. Mustafa Vs. Mst. Jaharat Ara Khanam—Second inquiry under the amendment is permissible.

11 DLR 134 (WP)—Fateh Sher Vs. Khan Yasin Khan—Complaint cannot be dismissed unless the result of the investigation is before him. Magistrate dismissing the complaint under section 203 can neither look into the report submited under section 174 or 176 nor can he dismiss it on such report (11 DLR 79 (WP)).

2 PCR 230—Habibullah Vs. Md. H. Khan—The hearing of a case was fixed on the 15th Sept, 51. No order was passed on that date but on the following day, the case was dismissed. The order dismissing the complaint under section 203 is illegal.

Death of complainant, effect—As there is no abatement of a criminal case on the death of the complainant, a fresh complaint on the same facts need not be made but the old complaint must be treated as pending and proceeded with to its disposal (Ref : 18 CWN 1291, 22 DLR 244, 43 DLR 60).

Revision—Where a complaint has been dismissed under this section; the Sessions Judge or the High Court Division may direct further inquiry under section 436 and 439 Cr. P. C respectively. An order for further inquiry directed to a subordinate court means that the case should be taken up

again and the question of dismissing the complaint or discharging the accused, as the case may be, should be again considered and an appropriate order made as a result of such fresh consideration. The accused should not forthwith be summoned without any further inquiry (28 Cr. LJ 857). A Magistrate has power to dismiss a complaint under section 203 after making a further inquiry directed by a superior Court (25 CWN 312, 30 CWN 546). Where a complaint is dismissed against some persons, revision lies against the order. The Magistrate cannot proceed against those persons on his own initiative (1973 P. Cr. LJ 777).

16 BLD (AD) 55—Yusuf A. Hassan Vs. K.M. Reazul Firdous—Neither the Sessions Judge nor the High Court Division has power to direct the Magistrate to take cognizance of a case. Their power is strictly limited to directing a further enquiry into the petition of complaint. It is for the Magistrate to take or not to take cognizance on holding further enquiry.

17 BLD (AD) 232—The State Vs. Raihan Ali Khan—When a Magistrate dismisses a complaint under section 203 Cr. P.C. and stops further enquiry he obviously passes a judicial order. Unless that order is got rid of the DAB cannot continue the same enquiry in violation of the said order.

17 BLD (AD) 228—Md. Ferdous Mondal and others Vs. The State and another—Dismissal of complaint -Revival or further enquiry?

When a complaint cases dismissed under section 203 Cr. P.C. and against such dismissal a revision under sections 435 and 439A Cr. P.C. is filed before the Sessions Judge, the legal and proper course open to the revisional Court, if the order of dismissal is found unjust and improper is to order for holding a further enquiry under section 436 Cr. P.C and not to make an order of revival of the case.

48 DLR 76—Sirajudullah and others Vs. State and others—The order of dismissal of the complaint passed under sections 203 and 204 (3) Cr.P.C does not amount to discharge. So, for a further inquiry in such a case, no notice to the accused is necessary.

The principle, that an order prejudicial to an accused should not be made, without giving him an opportunity to be heard, has no application where the accused is not discharged. A revisional application before the learned Sessions Judge at the instance of an aggrieved complainant against an order of dismissal of a complaint by the Magistrate can be gone into without notice to the accused.

48 DLR (AD) 53—Yusuf A Hossain Vs. KM Reazul Ferdous—Neither the Sessions Judge nor the High Court Division is invested with any power to direct any Magistrate to take cognizance of a case.

Their power is strictly limited to directing a further enquiry into the petition of complaint. It will be for the Magistrate concerned to take or not to take cognizance after the result of further enquiry. After the dismissal of the petition of complaint under section 203 Cr.P.C the informant- respondent's remedy was to approach the higher Court under section 436 Cr.P.C for further enquiry into his petition of complaint. The penultimate order of the High Court Division in directing the Chief Metropolitan Magistrate to take cognizance of the offence and to issue process in accordance with section 205(1) Cr.P.C is not sustainable.

52 DLR (HC) 583—Abul Kalam Azad (Md) and 2 ors Vs. State and others—A decision regarding framing of charge cannot be made without considering the inquiry report.

52 DLR (HC) 598—Rasharaj Sarker Vs. State (Criminal)—Since the Magistrate accepted the final reports and discharged the accused person as per provisions of law and since specific remedies have been provided in the Code against such discharge, the Magistrate has become functus officio and has no power to revive the proceeding.

52 DLR (HC) 395—A Rouf and others Vs. State and another—Sessions Judge cannot direct the Magistrate to take cognizance of a case. The power of Sessions Judge is limited to directing a further enquiry into it. It will be for the Magistrate concerned to take or not to take cognizance after the further enquiry. (Ref. 20 BLD (HC) 162).

21 BLD (HC) 560—Md. Abul Kalam Azad Vs. The State—Sections-203 and 241A—Section 203 empowers a Magistrate to dismiss a complaint if he finds after considering the statement on oath of the complainant and result of the investigation or enquiry held under section 202 that there is no sufficient ground for proceeding- Section 241A of the Code requires a Magistrate to hear the parties and consider the documents submitted along with the records of the case before framing a charge- Enquiry report is a part of the judicial record and one of the documents of the prosecution-A decision regarding framing of charge cannot be made without considering the enquiry report.

5 BLC 672—State Vs. Md Joynal Abeden and others—Section 203, 204 (3) and 436 –The powers of the High Court Division or the Sessions Judge in directing enquiry, prior to the commencement of the trial or during trial are limited in respect of any complaint which has been dismissed under section 203 or 204 (3) or into the case of any person accused of an offence who has been discharged and it is not wide enough to invest the Court with power to order further enquiry during trial in all cases.

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CHAPTER—XVII

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

204. Issue of process.— (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

(1A) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(1B) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

Scope and application— This is the only section authorising a court to issue process to an accused, whether he takes cognizance on a private complaint or on a police report or any information or knowledge other than a complaint or police-report (AIR 1932 Pat. 72). This section relates to the procedure for affecting attendance of the accused. Unless and until the court issues process for the attendance of the accused, judicial proceedings cannot be deemed to have been commenced against him (AIR 1943 Pat.

245). When a man files a complaint and supports it by his oath, rendering himself liable to prosecution and imprisonment if it is false, he is entitled to be believed unless there is some apparent reason for disbelieving him, and he is entitled to have the persons, against whom he complains, brought before the court and tried (40 Cal. 444). Sub-Section (1A) forbids the issue of summons or warrant against the accused until a list of prosecution witnesses has been filed. The object appears to enable the accused to prepare himself for their cross-examination. It would really mean filing such a list at the time of lodging the complaint as there will be no suitable opportunity afterwards, for if the Magistrate decides to issue process, service will be delayed for want of the list. Names of witnesses may be given in the complaint itself. Sub-section (1B) requires that where the complaint is in writing the summons or warrant issued against the accused shall be accompanied by a copy of the complaint. The object is to enable the accused to know precisely what is the charge against him. A copy of the complaint or as many copies as the number of persons charged should therefore be filed along with the written complaint. Sub-sections (1A) and (1B) are mandatory. The process-fee referred to in this section is only for the attendance of the accused at the commencement of proceedings.

42 DLR 286—Abdul Matin Vs. The State—Case sent to the Sessions Court by the Upa-zila Magistrate—Sessions Judge recorded some evidence—Prosecutor made an application for sending record to Upa-zila Court for taking cognizance against some persons allegedly implicated in the offence, by the witnesses in Sessions Court—Sessions Judge made an order accordingly—Magistrate complied with the order of the Sessions Judge—Held : Order of Sessions Judge is illegal and consequently cognizance taken of by the Magistrate thereon is illegal—The Court of Sessions or the High Court Division has no jurisdiction to interfere with the discretion of the Magistrate in the matter of taking cognizance of any offence irrespective of the fact whether the offence is triable by a court of Sessions or not.

8 BLD 180 (AD)—Bangladesh Vs. Yakub Sardar—Dismissing a complaint—Propriety of the order of dismissal—The main ground cited by the Magistrate for dismissal is that the police submitted charge-sheet in the case arising from the same occurrence—This is palpably wrong—The Magistrate must confine himself to the evidence produced before him and if on such evidence a prima facie case is made out he will issue process (Ref : 40 DLR 246 (AD)).

36 DLR 14 (AD)—Nasiruddin Mahmud Vs. Momtazuddin Ahmed—Proceeding before a Court starts when the Magistrate takes cognizance of an offence on police-report or on complaint. 'Initial stage' does not mean any stage prior to submission of the charge-sheet by the police, but it means a stage after submission of the charge-sheet (Ref : 1 BCR 235 SC).

32 DLR 247 SC—Abdul Jabbar Khan Vs. The State—Magistrate has been given the power for using discretion whether to proceed by way of issuing processes or not by the court. Wide discretion is given to the Magistrate with respect to the grant or refusal of the process and in the interest of the community generally it is essential that the Magistrate should be vested with an ample discretion in this matter. If the Magistrate having followed the procedure laid down in the Code can exercise his judicial discretion as to whether he ought to issue process or not, the High Court will respect his decision and will be slow to disturb his order that he has passed (Ref : 22 DLR 91 (WP), 16 DLR 24 (WP)).

27 CWN 651—Lalit Mohan Bhattacharjee Vs. Nani Lal Sarkar—On complaint be made, Magistrate ordered issue of process under section 204. Subsequently on that date as cross complaint being laid, the Magistrate rescinded the order and sent both the cases to a subordinate Magistrate for local inquiry and report. Held that the order passed by the Magistrate under section 204 was not a judgment to which the provisions of section 369 Cr. P. C would be applicable. There is nothing in the Code which forbids a Magistrate to reconsider an order of this kind on sufficient grounds. The

order passed by the Magistrate was a right and proper order and it was not made without jurisdiction.

21 DLR 284 (WP)—Md. Sarif Vs. Khan Mir Wali Jan—When a Magistrate issued process under section 204 without scrutinising that the facts disclosed is not a criminal offence but a civil liability, proceedings may be quashed.

14 DLR 517—Abdul Majid Vs. The State—Issue of warrant against accused after asking the police to report and before the receipt of the police report is illegal (Ref : 9 DLR 69).

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

14 DLR 26 (WP)—A. K. Khalid Vs. Khan Ghulam Quader Khan—Issuing warrant 'in the first instance' where according to fourth column of schedule 11 Cr. P. C a summons should issue is illegal.

7 DLR 99 (WP)—B. Sunders Vs. S. Abdus Sattar—Accused summoned under one section may be convicted or charged under any other section of law which from evidence he appears to have committed. Complaint not be deemed to have been dismissed as regards offence for which Magistrate had not issued summons under section 204 Cr. P. C. Complaint once dismissed cannot be revived by the same court. Power of revival rests with revising court.

2 DLR 18—Samda Vs. Mahmudulla—When once the Magistrate has issued a process under section 204 there is no scope or provision in the Code for deputing any person for local inquiry (Ref : 12 DLR 489).

Revision—The revisional Court has ample power to interfere with proceedings under this section. It can exercise its power at any stage of the proceedings and quash the same, though it will interfere only in case of an exceptional nature as where neither the complaint nor the prosecution disclosed a case against the accused but process has been issued under this section (26 Cal. 786, 11 Cr. LJ 525). Refusal to issue process amounts to discharge (9 CWN 820). Where a Magistrate having followed the procedure laid down, he exercised his discretion judicially in issuing a process or where

the error, omission, or irregularity in the issue of the process is one which is curable under section 537, the court will not interfere (13 Cr. LJ 609, AIR 1929 Lah. 267).

205. Magistrate may dispense with personal attendance of accused.—(1) Whenever a Magistrate issues a summons he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his advocate.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

41 DLR 321—Haji Hafez Md. Shamsul Islam Vs. Abdul Mabud—Section 205 Cr. P. C was and is applicable only to cases in which summons has been issued although expressions in Chapter XVII are meant for cases in which summons is issued and warrant is issued.

14 DLR 355—Mr. Nalini Kanta Sen Vs. M. Siddiq—Inherent power of the Court—Absence of any specific provisions in the Code—Court has the power to pass necessary orders for ends of justice. Exemption of the accused from the attendance in a warrant case—Court has got inherent power to pass such an order. Applicability of the section in regards to exemption of the accused from attendance.

6 DLR 17 (WP)—The Crown Vs. Jahandar—Pleader may be examined under section 342 on behelf of accused exempted from appearance under section 205.

4 BLT (AD) 85—Yusuf A. Hassan Vs. K. M. Reazul Ferdous—After the dismissed of the the petition of complaint under section 203 Cr. P. C. the informant-respondent's remedy was to approach the higher court under section 436 Cr. P. C. for further enquiry in to his petition of complaint. Neither the sessions judge not the High Court Division is invested with any power to direct any Magistrate to take cognizance of a case. Their power is strictly limited to directing a further enquiry into the petition of complaint. It will be for the Magistrate concerned to take or not to take cognizance after

the result of further enquiry—The Penultimate order of the High Court Division in directing the Chief Metropolitan Magistrate to take cognizance with section 205 (1) Cr. P. C is therefore, not sustainable in Law.

205A and **205B.** Omitted by Ord. No XXIV of 1982.

205C. Transfer of case to Court of Session when offence is triable exclusively by it.—When in a case instituted on a police-report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

(a) send the case to the Court of Session :

(b) Subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the transfer of the case to the Court of Session.

Scope and application—This section is new, since commitall proceeding under Chapter XVIII has been abolished in cases which are triable by the Court of Session, the case has to be sent to the Sessions Judge on receipt of the police report under section 173 Cr. P. C by the Magistrate who takes cognizance under section 190 Cr. P. C. As regards private complaints in cases triable exclusively by a Court of Session, the inquiry into the complaint by the Magistrate under section 202 (2A) proviso would serve the purpose of a preliminary scrutiny. After the case has been sent to the Court of Session by the Magistrate, the Sessions Judge would again take cognizance under section 193 Cr. P. C. No doubt the two provisions state that both the Magistrate as well as the Sessions Court has to take cognizance of the case in order to determine whether the facts disclose or indicate the commission of Offence triable by the Court of Session (1979

Pak. Cr. LJ 482). The Court of Session cannot take cognizance of a case unless it is sent to it by a Magistrate.

35 DLR 141—Abdus Salam Master Vs. The State—All necessary materials to be sent when the Magistrate sends a case to the Sessions Court for trial. When under section 205C of the Cr. P. C the Magistrate in a case instituted on a police-report or otherwise sends a case to the Court of Session, he is required to send to that Court the documents, articles if any, the record of the case which includes the FIR or the complaint, the statements of the witnesses recorded by the police or the Magistrate and other parers (the police-report, statements recorded under section 164 Cr. P. C, dying declaration, inquest report, postmortem report, doctor's report regarding injuries, seizure lists, etc.) connected with that case. In a complaint case, the Magistrate is to decide after the statement of the complainant and witnesses whether to proceed with the trial of case. In cases triable by Sessions Court, the Magistrate to decide whether cognizance is to be taken.

35 DLR 103—Abdur Razzaque Vs. The State—Court of Sessions precluded from taking cognizance of an offence as a court of original jurisdiction. So far as the Court of Session is concerned, proceeding must initiate before a Magistrate as provided in section 190 Cr.P.C. A Magistrate taking cognizance of an offence issues process under section 204 thereof. Section 205C provides, inter alia, that when in a case instituted on a police-report or otherwise the accused appears or is brought before the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall send the case to the Court of Sessions.

52 DLR (HC) 276—Nurul Islam Manzoor Vs. State—Section 205C—From a reading of this section, it is found that there is any dead-end time limit for producing those documents in Court.

8 BLT (HC) 199—Nurul Islam Monzoor & Ors. Vs. The State—We are of the view that the documents must be produced before hearing under section 265B of the Code so that an accused may take proper defence.

5 MLR (HC) 243—Nurul Islam Manzoor Vs. State—Code of Criminal Procedure, 1898—Section 205C—Transmission of record to court of Sessions with documents—Omission to do so—Consequence of—Statements recorded under sections 161 and 164 of the Code of Criminal Procedure fall within the category of documents as mentioned in section 205C. Copies of such documents should be supplied to the accused for their defence. Omission to do so causes prejudice to the accused. The purpose of the law will be served if copies of those documents are supplied to the accused before hearing the framing of the charge.

205CC. Transfer of case to District Magistrate etc.—(1) When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Chief Metropolitan Magistrate, District Magistrate or the Additional District Magistrate, he shall—

(a) send the case to the Chief Metropolitan Magistrate or, as the case may be, District Magistrate;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of the trial;

(c) send to the Chief Metropolitan Magistrate or, as the case may be, District Magistrate the record of the case and the documents and articles, if any, which are to be produced in evidence.

(2) The District Magistrate may direct that any case received by him under sub-section (1) or any class of such cases shall be heard by any Additional District Magistrate subordinate to him.

Decision

35 DLR 425—Abdus Salik Vs. The State—If the Magistrate found on the basis of materials that the case is triable by Sessions Judge (now District Magistrate) he should have acted under section 205C and now under section 205CC. The naraji

petition filed by the informant ought to have been disposed of by the Sub-Divisional Magistrate in accordance with the provisions provided under Chapter XVI of the Code of Criminal Procedure, and if he were of the opinion, that there were sufficient grounds for proceeding against those discharged accused persons for including the alleged offence under section 326 P. C; he was to take steps either under section 205CC Criminal Procedure Code as the circumstances of the case would warrant.

Police submitted charge-sheet in respect of accused and final report in respect of several others. Magistrate accepting the police-report passed an order of discharge in respect of those dealt in the final report. On naraji petition filed by the Complainant Magistrate directed the police to submit a supplementary charge-sheet for a graver offence for all including those discharged earlier. Held, Magistrate's direction is illegal and has to be quashed.

205D. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.—(1) When in a case instituted otherwise than on a police-report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police-officer conducting the investigation.

(2) If a report is made by the investigating police-officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police-report as if both the case were instituted on a police-report.

(3) If the police-report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of

any offence on the police-report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

Scope and application—It is desirable that when there is a case and counter-case over the same incident both the cases should be tried simultaneously by the same court.

18 DLR 474 SC—Nur Elahi Vs. The State—Of the same incident police case gives one version, complainant gives a different version. How the trial of both the cases in the same court to proceed. A man was murdered. The police on investigation proceeded to prosecute some persons as being the culprit. The complainant, a private party then put in a complaint giving a separate version of the incident involving some other persons as the culprits. The question arose at the time of trial as to how the complaint case and the police case are to be dealt with. The High Court, when the matter was carried to it, ordered that there should be two separate trial in respect of the two cases (Ref : 8 BLD 180 (AD); 7 BLD 11).

21 DLR 958—Nazamat Ali Vs. The State—Counter-cases arising out of the same occurrence should be disposed of by the same court simultaneously (Ref : 7 DLR 395).

17 DLR 186 SC—Golam Haider Vs. The State—Bloody fight between two parties in terms of enmity with each other. Each party in an incident like this throwing the responsibility on the others. In occurrences of this nature responsibility for individual injuries to be fixed on a careful examination of the evidence on the person responsible for it, none being held in constructive liability (Ref : 40 DLR 282 (AD)).

4 MLR (AD) P-266—Mokhlesur Rahman Vs. Rabeya Parvin Chowdhury and others—Trial of cases instituted on complaint and on police report on the same matter—Both the cases, one instituted on complaint and the other on police report on same matters be tried together as if instituted on a police report.

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CHAPTER—XVIII

SECTIONS 206 TO 220 OMITTED ON 1.6.79 BY LAW REFORMS ORDINANCE.

CHAPTER—XIX

OF THE CHARGE

FORM OF CHARGES

221. Charge to state offence.—(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) **Specific name of offence sufficient description.** If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) **How stated where offence has no specific name.** If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The Law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) **What implied in charge.** The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charge was fulfilled in the particular case.

(6) **Language of charge.** The charge shall be written either in English or in the language of the Court.

(7) **Previous conviction when to be set out.** If the accused having been previously convicted of any offence liable, by reason of such previous conviction, to enhanced

punishment or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it at any time before sentence is passed.

ILLUSTRATIONS

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

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

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

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

Scope and application—A charge is an important step in a criminal proceeding. It separates the inquiry stage from trial. The whole object of framing a charge is to enable the defence

to concentrate its attention on the case that he has to meet, and if charge is framed in such a vague manner that the necessary ingredients of the offence with which the accused is convicted are not brought out in the charge, then the charge is defective (AIR 1945 All 81). The framing of a proper charge is vital to a criminal trial and this is a matter on which the Magistrate or Judge should bestow the most careful attention. A charge should be carefully drawn up in accordance with the offence disclosed (AIR 1943 All 271). The charge should be precise in its scope and particular in its details (AIR 1919 Pat 27 FB). A charge is defined as a 'precise formulation of the specific accusation made against a person who is entitled to know its nature at the very earliest stage. The necessity of a system of written accusation specifying a definite criminal offence is the essence of criminal procedure' (5 CWN 866 PC). A 'previous conviction' means a previous conviction by a Bangladeshi court and not by a foreign court (AIR 1919 All 63).

34 DLR 95—Ali Akbar Khan Vs. The State—It should be stated for the guidance of the trial Courts that in all cases where charges are framed under sections 147, 148 for substantive offence read with section 149 of the Penal Code additional separate charges should be framed against each individual accused for an offence directly committed by him while being a member of such assembly and they should carefully take note of the provisions of sections 221, 233 and 236 of the Cr. P. C. Charge which causes prejudice to the accused due to error or irregularity makes out a case for re-trial.

33 DLR 203—Tamiz Meah Vs. Government of the People's Republic of Bangladesh—Joinder of scheduled and non-scheduled offences is an illegality (Ref: 1 BSCD 151).

17 DLR 692—Hachi Meah Vs. The State—The requirement of law under section 221 Cr. P. C is that a charge should state the offence committed by the accused and mention the specific name of the offence if any specific name has been given to it by law. If the law does not give any specific name of the offence particulars should be set out to give requisite notice to the

accused. In particular, this section provides that, when a specific offence is alleged to have been committed by the accused the necessary ingredients of the said offence would be impliedly imported to the charge.

11 DLR 242—Ear Ali Vs. The State—Where a female under 16 years of age is kidnapped by the accused with intent that she may be compelled or knowing it to be likely that she will be compelled to marry against her will, the charge must state from whose guardianship that female had been kidnapped.

48 DLR 457—Abdur Razzaque @ Geda Vs. State—Charge-Charge is a precise formulation of the specific accusation made against a person who is entitled to know its nature at the very earliest stage.

50 DLR 199—Bashir Kha Vs. State—The failure of the trial Court in not mentioning the particulars which are required to be mentioned under sections 221 and 222 of the Code while framing charge deprived the accused proper defence and as such the error has occasioned failure of justice.

48 DLR 427—Moslem Ali Mollah Alias Moslem Molla and others Vs. State—A charge is an importan step in a criminal proceeding and the accused is answerable to the charges levelled against him. The object of framing charge is to ensure that the accused may have as full particulars as are possible of the accusation brought against him. Defect in framing charge is not curable under section 537 of the Cr.P.C.

20 BLD (HC) 177—Habibur Rahman Alias Raju Vs. The State—When any section of any law is quoted at the time of framing of charge, the section must be quoted in the language in which the law is framed.

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

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

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

Scope and application—The charge must contain sufficient particulars as to time, place, person and circumstances, so that the accused may have notice of the matter with which he is charged. The object of this section is to ensure that the accused may have as full particulars as far as possible of the accusation made against him (34 CWN 901). The particulars given must be sufficient to give the accused notice of the matter with which he is charged (AIR 1956 SC 575). A charge of defamation is defective if it does not set forth the particular occasion on which it was said to have been committed (30 Cr. LJ 1073). This sub-section (2) enacts that the charge in respect of a gross-sum appropriated within one year shall be treated as a charge for one offence.

39 DLR 184—Mansur Ali Vs. The State—Criminal breach of trust in respect of several items-charge is to limit the period of commiting such offence to one year—If this provision of law not observed, the Judgment must be set aside—such illegality not curable under section 537, Cr.P.C (Ref : 22 DLR 539).

38 DLR 124—Md. Rafiqullah Vs. The State—The investigating Officer in the present case submitted charge-sheet for criminal breach of trust and dishonest misappropriation by the two accused petrs, for the period of 5 years from 1979-83. The said charge-sheet is, therefore, defective and erroneous and since it is in contravention of section 233 read with section 222 (2) and 234 Cr. P. C, such charge-sheet is no charge-sheet in the eye of law. The police can submit any number of supplimentary charge-sheet.

7 BLD 413—Abdul Majid Vs. The State—Charge of mis-appropriation—where dates of mis-appropriation of various items extend over a period of more than one year, they cannot be lumped together in the same charge—In the instant case misappropriation took place over a period of six years but one charge was framed—The framing of charge is contrary to law and the trial is illegal.

1 BLD 200 (SC)—Abdul Karim Vs. The State—Trial court is required to give clear finding on it Court fails to discharge its duty when these questions are left without any clear finding but leaving the question with the mere observation that the arguments raise great doubt. Relationship by itself cannot be a ground for rejecting testimony of a witness unless it is shown that the witness was baised and resorted to falsehood.

25 DLR 14—Abdul Mutaleb Vs. The State—Provisions of sub-section (2) of section 222 Cr. P. C are exception to the general rule regarding joinder of charges and these provisions provide for a trial only in respect of criminal breach of trust or dishonest mis-appropriation of money of a gross-sum in respect of which the offence is alleged to have been committed specifying only the dates between which the offence is alleged to have been committed. This cannot be extended to an offence of a criminal misconduct by a public servant (Ref : 4 DLR 80).

5 DLR 519—Safiuddin Vs. The Crown—Non-mention of particulars as to things, trial illegal.

2 DLR 366—Debendra Nath Vs. The Crown—The case referred to in section 222 (2) is a case in which the charge is criminal breach of trust or dishonest misappropriation of money and it does not apply to a case of criminal breach of trust or dishonest misappropriation of goods, and affords no jurisdiction for mixing up money and goods. When a person is charged with criminal breach of trust of certain property entrusted to him he cannot be convicted of embezzling, not the property, but the amount obtained by dealing with it.

2 DLR 349—Sailendra Prasad Vs. The Crown—Charging in a lump for an aggregate sum is permissible under section 222 (2) only in case of breach of trust or misappropriation of

money but each item of omission to enter was found to be a separate offence and unless they were covered by section 235 Cr. P. C they offended the provisions of section 233 Cr. P. C.

16 BLD (HC) 580—Md. Nizamuddin Dhali Vs. The State—Particular of a charge—A charge must contain the particulars as to the time and place of the alleged offence and these should be reasonably sufficient to give the accused notice of the matters he will have to face at the trial. In the instant case, no date or dates of the commission of the alleged offence having been mentioned in the charge, it is to be held that the provision of section 222 Cr.P.C. has not been complied with.

16 BLD (HC) 312—Abdur Razzak Alias Geda Vs. The State—A charge is to contain particulars as to time, place, person and manner of the occurrence so that the accused can effectively meet the allegations brought against him. Unless the charge contains particulars regarding the time, place and manner of the occurrence the accused is likely to be seriously prejudiced in his defence.

17 BLD (HC) 223—Md. Abdul Bari Molla Vs. The State—Law requires that the first and last dates of the charge of criminal breach of trust or dishonest misappropriation of money shall not exceed one year. In the present case the charge of misappropriation of money extended over a period of 2 years which vitiated the trial. The case was sent back on remand to the trial Court for holding trial according to law. [3 BLC 474]

48 DLR 294—Abul Kalam Azad Vs. State—Charges framed in violation of the mandatory provision of section 234 (1) read with section 222 (2) of the Cr.P.C is an illegality not curable under section 537 of the Code and as such the impugned conviction and sentence are set aside. [1 BLC 316]

4 MLR (HC) 81—Jyoti Prakash Dutta Vs. The State—Joinder of charges-Not more than one charge should be brought under the single head against the accused because such joinder not only causes prejudice to the accused in his defence but also violate the provision of Section 222 Cr.P.C.

7 BLC (HC) 342—Miras Uddin and others Vs. State (Criminal)—Sections 222(2), 234(1) and 537—In the instant

case the accused-appellants along with another were charged under sections 148/323/326/302/34 of the Penal Code and in view of such facts and circumstances the charge so framed in this case is illegal and as such the accused-appellants had been prejudiced which is not curable under section 537, Cr.P.C.

54 DLR (AD) 101—Delower Hossain Khan Vs. State (Criminal)—The element of continuity of action was present in the case in that the petitioner and others encircled the house of the victims and thereafter petitioner and some others entered into the hut of the victims and caused injuries by sharp cutting weapons in consequence whereof the death occured. In this state of the matter it can in no way be said that causing death of the two persons by the petitioner and others was not committed or done in the course of the 'same transaction'.

22 BLD (AD) 123—Delowear Hossain Khan Vs. The State—Sections-233 and 239(a)—The real and substantial test for determining whether several offences are connected for the framing of joint charge and joint trial together so as to form one transaction depends upon whether they are so related to one another in point of purpose or as to cause and effect as to constitute one continuous action or whether the accused had community of purpose or design in committing the alleged offences and whether there was community of action or that series of acts were connected together by proximity of time, unity of purpose and continuity of action.

22 BLD (AD) 117—Jitendra Nath Mistry Vs. Abdul Malek Howlader & ors.—Construction of Deeds-Where a transfer is challenged after the lapse of considerable long time and after the death of the parties to the document, a court may take into account the recitals in the document along with the circumstances in making a decision as to the validity of the deed.

53 DLR (AD) 100—Abul Fazal (Md) alias Abul Fazal alias Badal and another Vs. State (Criminal)—Sections 234 & 561A—The contention that there cannot be three separate

cases out of single transaction and the petitioners cannot be put on trial in three separate cases arising out of one transaction is of no substance.

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

ILLUSTRATIONS

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

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

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

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

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

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

Scope and application—The object of this section is, firstly to ensure that the accused has sufficient notice of the matter with which he is charged as otherwise he will be seriously prejudiced in his defence, and secondly, to enable the court to keep in view, the real points in issue and to confine the evidence to such points. The illustrations to the section make the manner of commission of particular offence clear.

13 DLR 80—M. A. Motalib Vs. The State—Where the charges are so defective that they do not give any notice to the accused as to the nature of the case which the prosecution sought to make against him, the trial held is illegal.

4 DLR 80—A Salam Chowdhury Vs. The Crown—In framing a charge for criminal breach of trust, the mode in which the offence is alleged to have been committed should be specified in the charge without which the accused is bound to feel difficulty in defending himself.

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

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

ILLUSTRATIONS

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

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

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had to means of

knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

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

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

Scope and application—The object of this section is to prevent failure of justice where there has been some technical breach of the rules as to what should be stated in the charge either in stating the offence or particulars. Unless the irregularities or omission has misled or caused prejudice to the accused and occasioned a failure of justice it will not vitiate the trial (1954 Cr. LJ 1708).

44 DLR 159—Abul Hashem Master Vs. State—Defect in charge curable—When the FIR and the evidence have given the exact time of the occurrence, a mis-statement in the charge as to the time of the occurrence cannot misled the accused in his defence and the trial cannot be said to have been vitiated in view of the provision under sections 225 and 535 Cr. P. C.

34 DLR 94—Ali Akbar Khan Vs. The State—Charge which causes prejudice to the accused due to error or irregularity makes out a case for retrial.

12 DLR 615—Anwar Hossain Talukdar Vs. East Pakistan—Non-compliance with rules of procedure as misjoinder of charges, will not amount to an illegal exercise of jurisdiction.

11 DLR 884 SC—Hazrat Jamal Vs. The State—Where the circumstances showed that the accused could have been under no illusion as to the charge they had to defend themselves against and at no stage, during the trial any exception was taken to the charge, it could not be said that any prejudice is caused to the accused in their defence by the omission of certain words from the charge or that said omission had occasioned in fact a failure of justice. The omission was curable under sections 225 and 537 Cr. P. C.

7 DLR 34 (WP)—Alauddin Vs. Ramzoo—The charge was erroneous in respect of the date and place of payment, but there was nothing in the case to show that the accused has been misled in his defence. Held : No prejudice having resulted to the accused, the error in the charge was immaterial and could no effect the legality of the trial.

226. Omitted.

227. Court may alter charge.—(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

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

Scope and application—The court has discretion to alter or add to a charge framed under the Code. Where in the course of the evidence an offence more aggravated than the one complained of is discovered, it is the duty of the court to charge the accused with the more aggravated offence (30 Cr. LJ 957).

45 DLR 533—HM. Ershad Vs. The State—The case having been sent to the Special Judge after taking of cognizance by the Senior Special Judge there is no illegality in the adding of fresh charge by the former. The Court is competent to add or alter charge if situation arises and the materials placed before it reveals justification (Ref : 14 BLD 161 (AD)).

3 DLR 145—Jaifar Vs. Idris Ali—The test to be applied as to whether an accused person charged under one section can be

convicted under another section is whether he had notice of the offence of which he is to be convicted so that he was not prejudiced by the conviction (Ref : 8 PLD 157, 30 Cr. LJ 957).

3 BLT (HC) 98—Abu Bakker Vs. The State—Cruelty to Women (Deterrent Punishment) Ordinance, 1983 Sections 4 and 8A read with 25D of the Special Powers Act. Any Court may alter or add to any charge at any time before judgment is Pronounced Subject to the mandatory Provision of section 231 of the Code as soon as the altered Charge was readover, the accused Pleaded not guilty and prayed for an opportunity to further Cross-examine all the P. Ws by filling an application to that effect which Tribunal readily allowed.

Held: When the Special Tribunal allowed the appellants Prayer for further cross-examination of all P. Ws as Provided for Section 231 there was no Scope of his being Prejudiced.

Revision—Where an alteration in the charges occasioned a failure of justice, the court of revision may interfere (32 Cr. LJ 756).

5 BLC 386—Mahir Mollah and others Vs. State—Charge can be altered at any time before delivery of judgment as per provisions of section 277 of the Code of Criminal Procedure. After framing a charge under section 304/34 of the Penal Code, there is no legal bar to find the accused guilty under lower sections 304/34 of the Penal Code.

228. When trial may proceed immediately after alteration.—If the charge framed or alteration or addition made under section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discrection, after such charge or alteration, or addition has been framed or made, proceed with the trial as if the new or alterred charge had been the original charge.

229. When new trial may be directed or trial suspended.—If the new altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as

aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

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

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

Decision

5 DLR 44 (FC)—Fazal Elahi Vs. The Crown—The proceedings envisaged in section 231 are in the nature of a limited inquiry relevant to the new matter appearing in the added or altered charge, and such a limited inquiry also have been conducted or directed under the powers derived from section 375 Cr. P. C.

1 DLR 141—Nurul Islam Aziz Vs. The Crown—The accused is entitled to re-call the prosecution witnesses after alteration of charge, even if the alteration did not affect his defence.

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

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

ILLUSTRATION

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

48 DLR 457—A. Razzaque @ Beda Vs. The State—The accused has been prejudiced by absence of charge or framing of the charge at a belated stage. Section 232 Cr.P.C contemplates a new trial or remanding of the case to the trial Court in such a situation. It is too late now to direct a retrial after a long lapse time.

Joinder of charges

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

ILLUSTRATION

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

Scope and application—The object of this section is to give the accused notice of the charges which he has to meet and to see that he is not embarassed to meet charges in no way connected with one another, or the complexity of charges levelled against him or any charge which he may not be able to defend properly. Another object of the section is to prevent the inconvenience of hearing together a number of instances of

capability and the consequent embarassment both to the Judge and to the accused. Sections 233 to 240 deal with joinder of charges and they must be read together and not in isolation. Where there is misjoinder of parties the trial is vitiated. Simultaneous trials of cross-cases before two different courts over one and the same occurrence are undesirable (7 DLR 395). The two cases should be heard one after the other and the judgment in the first case should be postponed tilll after the conclusion of the second case and the judgment should be pronounced separately in each case.

54 DLR 101 (AD)—Delower Hossain Khan Vs. State—The element of continuity of action was also present in the instant case in that the petitioner and others encircled the house of the victims and that thereafter petitioner and some others entered into the hut of the victims and caused injuries by sharp catting weapons in consequence whereof the death occurred, In this state of the matter it can in no way be said that the offences or, in other words, causing death of the two persons by the petitioner and others was not committed or done in the course of the "same transaction" or in one transaction.

34 DLR 95—Ali Akber Khan Vs. The State—Charges which cause prejudice to the accused due to error or irregularity makes out a case for re-trial.

24 DLR 150—Aminul Islam Vs. The State—Trial of 14 offences committed in the course of different transactions by an accused were made the subject-matter of one single trial. Such trial was vitiated for non-compliance of the mandatory provision of section 233 Cr. P. C and cannot be justified by any of the exception mentioned thereto. Such defect cannot also be cured under section 537 Cr. P. C (Ref : 24 DLR 57).

23 DLR 32—the State Vs. Azahar Gazi—There should be a separate charge for each distinct offence. The provision is mandatory. Causing the death of two persons are two distinct offences. Framing of one charge for to specific offences of murder, even if committed in the same occurrence or same transaction, is defective and confusing (Ref : 23 DLR 91).

16 DLR 127 (WP)—The State Vs. Mirza Azam Begum—Sections 233 to 239 deal with the joinder of charges and they must be read together and not in isolation.

9 DLR 253—Sheikh Kaloo Vs. The State—Where there is ample evidence to show that petitioners were confederates and partners in their misdeeds a joint trial is permissible.

8 DLR 55 (FC)—Qader Dad Vs. Sultan Bibi—The two incidents are indepedent of each other and are separate and unconnected and, as such, they cannot be tried jointly (Ref : 4 PLD 34 Lah).

7 DLR 274—Abdul Hanif Vs. The Crown—Prohibition against misjoinder of charges applies to summary trials as it does to ordinary trials. The record must show that there was no misjoinder of charges.

4 DLR 97—Ramesh Chandra Chowdhury Vs. The Crown—Accused, an ammunition dealer, charged under the Arms Act for making three false entries and for possessing 8 cartridges in excess. Accused prejudiced by misjoinder of charges (Ref : PLD 1957 Lah. 461).

3 DLR 381 (FC)—Sadik Vs. The Crown—Where the offence of having been in possession of a spear which is punishable under the Arms Act is so connected with offences punishable under the Penal Code as to form part of the same transaction, it cannot be said that the trial was vitiated on account of misjoinder of charges, and in such a case the accused could have been legally charged and tried at one trial for all the offences committed by him during the same transaction. Unless it would be shown that the misjoinder of charges had in fact prejudiced the accused and occasioned a failure of Justice, and objection of the nature is not tenable.

2 DLR 349—Sailendra Prasad Vs. The Crown—The only exception to section 233 is the one provided in section 222 (2) but that exception does not apply to a charge of falsification of accounts because it applies in case of breach of trust or dishonest misappropriation of money.

234. Three offences of same kind within year may be charged together.—(1) When a person is accused of more

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

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Penal Code or of any special law :

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

Scope and application– Section 234, 235 etc. are exceptions to the broad and general rule ennunciated in section 233. The object of these exceptions is to avoid the necessity of the same witnessess giving the same evidence two or three times over in different trials, and to join in one trial those offences with regard to which the evidence would overlap.

44 DLR 441–Abdul Quddus Vs. The State–Mrsjoinder of charges–One charge both under sections 460 and 302/34 P. C. framed against all the accused is defective and conviction thereunder, is set aside.

40 DLR 377–Lal Meah Vs. The State–Section 234 and section 236 apply to cases where one person may be dealt with at one trial for more than one offence while section 239 applied to the trial of more persons than one jointly. Where two incidents are independent and wholly unconnected with each other, no joint trial is permitted.

25 DLR 14–Abdul Motaleb Khan Vs. The State–The words one 'offence within the meaning of section 234' in section 222 (2) are significant. The charge framed under sub-section (2) of section 222 has to be treated as a charge of one offence for the

purpose of section 234 only. It may be said that it has no bearing as regards section 235 Cr. P. C. So far as section 235 Cr. P. C is concerned all items of misappropriation have to be taken as all distinct offences. Dishonest misappropriation and criminal misconduct fall within two different laws (Ref : 12 DLR 408).

20 DLR 931—Abdul Matin Vs. SDM—High Court is competent to interfere in case of misjoinder of charges under Article 98 of the Constitution as held by the Full Bench in the case of Abdul Kuddus (13 DLR 313).

16 DLR 159—Abdul Hai Jamali Vs. The State—Charges under section 409 and 461 of the Penal Code in respect of some property and charges under section 5 (1) (d) of Act II of 1947 in respect of some others-Illegal, vitiating the trial.

13 DLR 846—Abdul Awal Khan Vs. The State—Misjoinder of charge is an illegality not curable under section 537 (Ref : 12 DLR 100).

12 DLR 90—Arshad Ali Khan Vs. The State—In respect of three offences of the same kind committed within twelve months, a charge under section 161 P. C was framed and separate charge for these offences was also framed against the same person under section 5 (2) Prevention of Corruption Act, and the accused was on his trial to answer both the charges. Trial vitiated by misjoinder of charges (Ref : 9 PLD 290 Lah).

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

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

(3) **Acts constituting one offence but constituting when combined a different offence.** If several acts, of which

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

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

ILLUSTRATIONS

to sub-section (1)—

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

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

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

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

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

(f) A with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false

evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with and convicted of, offences under sections 211 and 194 of the Penal Code.

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

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

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

to sub-section (2)—

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

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

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

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

to sub-section (3)—

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

Scope and application—Sections 234, 235, 236 and 237 are mutually exclusive and can individually be relied upon as justifying joinder of charge. The sections vest a discretion in the court to try offences of the kinds indicated therein jointly in the circumstance therein mentioned, but there is nothing in them to indicate that the court is bound to try such offences or persons together in every case. The expression 'same transaction' has not been defined in the Code. It must be however noticed that in order that a series of acts be regarded as the same transaction, they must be connected together in same way as for instance by proximity of time, unity of place, unity of community of purpose or design and continuity of section.

53 DLR (HC) 287—State Vs. Licut. Col. Syed Farooq Rahaman—The section 235 empowers trial of a person for more offences than one if those are committed in the same transaction but section 239 provides for persons accused of different offences committed in the course of the same transaction.

56 DLR 556—State Vs. Md Abu Taher—Sections 235 & 239—Whether a series of acts are so connected as to form the same transaction is purely a question of fact depending on proximity of time and place, continuity of action and unity of purpose and design. A comprehensive formula of universal application cannot be framed regarding the question whether two or more acts constitute the same transaction.

42 DLR 22 (SC)—Arfan Ali Vs. The State—When facts of the case are such that it is doubtful which of the several offences has been committed the accused may be charged with having all or any of such offences; and after trial for one such offence the accused may be convicted for the other offence even though he was not charged thereafter—in the instant case 'robbery' and 'unauthorised possession of fire arms' are

not offences of the same nature contemplated in sections 236 and 237 (1) Cr. P. C, but these are two distinct offences for which a person may be charged for each of them as provided in section 235 (1) Cr. P. C.

29 DLR 250 (SC)—K.M. Zakir Hossain Vs. The State—The real and substantial test for determining whether several offences are so connected together so as to form one transaction depends upon whether they are so related to one another in point of purpose or as cause and effect as to constitute one continuous action (Ref : 28 DLR 452).

29 DLR 157—Md. Abdul Latif Vs. The State—The Legislature has provided that separate charges referred to in Illustrations (a) to (h) of section 235 Cr. P. C respectively may be tried at the same time. The requirement of law is that separate charges could be made but they ought to have been tried in the same trial. Same offence that was committed by the accused and as has already been tried and convicted, the second conviction is a coram non judice and trial is vitiated as being hit by section 403 Cr. P. C.

16 DLR 233 (SC)—Noor Ahmed Vs. The State—Joint trial of offences or person is discretionary with the court when can be held. When joint trial is wrongly held, the trial is illegal irrespective of the question of prejudice.

13 DLR 256—The State Vs. Derajuddin Mondal—Several persons animated by a common purpose and individually doing different offences, all liable. Participants to the offence joining it at subsequent stage, equally responsible (Ref : 1957 PLD 290 Lah., 4 PLD 1 Bal.).

10 DLR 134—Babar Ali Biswas Vs. The State—Misjoinder of charge under section 147 and 242 P. C, trial vitiated.

10 DLR 23—Abdul Hakim Vs. The State—Trial for more than one offence if the acts are so connected as to from the same transaction. When a person by a forgery commits two offences, one of which was under section 467 and other under section 193 Penal Code, he can be charged with and tried under section 235 (1) Cr. P. C for both the offences together.

7 DLR 302—Md. Yusuf Vs. The Crown—Accused cannot be sentenced under section 161 Penal Code and also under section 5(2) Prevention of Corruption Act though his conviction under the two sections is valid in law.

6 DLR 445—Gobinda Chandra Pandit Vs. The Crown—The exprassion 'by the same person' occuring in section 235 Cr. P. C indicates that when there are more than one accused the section has no application.

51 DLR 473—Parveen and another Vs. State—Where from the facts of the case it is not clear which of the several offences has been committed, the accused may be charged with having committed all or any of such offences and he may be convicted of the offence which he is shown to have committed although he was not charged with it.

21 BLD (HC) 413—Parvin and ano. Vs. The State—Sections-235 to 237—Where from the facts of the case it is not clear which of the several offences has been committed, the accused may be charged with having committed all or any of such offences for trial and he may be convicted of the offence which he is shown to have committed, although was not charged with it.

53 DLR (AD) 50—Rajib Kamrul Hasan and 3 others Vs. State (Criminal)—Sections 236, 237, 238 & 337—The accused raised no objection on the score of defect in charge at any stage of the trial. The objection raised for the first time in the Appellate Division is not entertainable by virtue of explanation appended to section 537 of the Code of Criminal Procedure.

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

ILLUSTRATIONS

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

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

Scope and application—This section contemplates a state of facts which constitute a single offence. This section applies only to those rare cases in which prosecution cannot establish exclusively any one offence and when from the evidence led by prosecution, it is doubtful which of several offences has been committed by the accused person (21 Cr. LJ 44).

1 BCR 129 (SC)—Kalu and another Vs. The State—Accused appellants were charged under section 302/34 of the P. C but Additional Sessions Judge on consideration of evidence on records found them guilty under section 201 Penal Code. High Court Division upheld the conviction by referring to section 236 and 237 of the Cr. P. C. Appellate Division found no illegality in the observation and finding of the High Court Division.

21 DLR 323 (SC)—Shahadad Khan Vs. Home Secretery to the Government of West Pakistan—Joint trial of co-accused is not compulsory. Several accused charged for committing same offence in course of same transactions tried separately, trial is not illegal.

53 DLR (AD) 50—The accused raised no objection on the score of defect in charge at any stage of the trial. The objection raised for the first time in the Appellate Division is not entertainable by virtue of explanation appended to section 537 of the Cr.P.C.

45 DLR 161 (AD)—Kalu Vs. State—When an accused is charged under sections 302 and 34 Penal Code his conviction under section 201 Penal Code is legal (Ref : 12 DLR 392).

9 DLR 1 (SC)—Md. Anwar Vs. The State—Charge if there is some element of doubt can be validly framed for a substantive offence read with section 149 Penal Code in view of sections 236 and 237 conviction and sentence can legally be passed for the substantive offence.

8 DLR 61 (FC)—Bashir Md. Vs. The Crown—Section 236 can be called in aid where in the case of one of the accused persons who is being jointly tried with others it is, at the time the charge is framed, doubtful which of several offences the facts which can be proved will constitute. In such a case an additional charge or a charge in the alternative can be and should be added against that accused person (Ref : 2 PLD 808 Lah., 7 DLR 572, 6 DLR 171).

5 DLR 52—The Crown Vs. Abdul Quddus—Neither of the sections 236 and 239 (d) permit joinder of charges under section 396 and alternatively under section 302 and 120B Penal Code.

19 BLD (HC) 307—Al Amin Vs. The State—An offence under a particular section if not proved but some other offence is made out by the prosecution, the accused persons can be very well convicted and sentenced for the other offences proved before the Court through legal evidence and the same is permissible in view of the provisions of sections 236 and 237 of the Code. (Ref. 51 DLR 154).

24 BCR 169 (HC)—The State Vs. Abdus Samad Azad & Ors.—Sections 236 & 237—If an offence under a section is proved, though not charged, accused person can be very much convicted for the offence proved and the same is permissible,

237. When a person is charged with one offence, he can be convicted of another.—(1) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may convicted of the offence which he is

shown to have committed, although he was not charged with it.

ILLUSTRATION

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

Scope and application—This section is controlled by section 236 Cr. P. C. The charge of which an accused can be found guilty under section 237 must be a charge which could have been framed against him under section 236 Cr. P. C. The true test is whether the facts are such as to give the accused notice of the offence for which he is going to be convicted though he was not charged with it so that he is not prejudiced by the mere absence of a specific charge (Ref : 39 CWN 620, 42 DLR 22 (SC)).

56 DLR 305—State Vs. Ershad Ali Sikder and Ors.—Law is well settled that if an offence under a section is proved though not charged the accused can be convicted for the offence proved on the strength of the provision of section 237 of the Code.

53 DLR (AD) 50—The accused raised no objection on the score of defect in charge at any stage of the trial. The objection raised for the first time in the Appellate Division is not entertainable by virtue of explanation appended to section 537 of the Cr.P.C.

41 DLR 7—Mahabubul Alam Vs. The State—In view of the provisions of Section 237 of the Code of Criminal Procedure the conviction of the petitioner under section 381 is maintainable although he was charged under section 408 but not under section 381 of Penal Code (Ref : 8 DLR 135 (SC), 3 DLR 144).

40 DLR 545—Jahangir Hossain Vs. The State—Appellate Court can alter the conviction for other offence for which no charge was made.

40 DLR 286 (AD)—Mafizuddin Vs. The State—According to Mulla J. the process of altering a finding in an appeal from

conviction must operate only within the limits prescribed under sections 236, 237 and 238 Cr. P. C. and this process of alteration must stop whenever it comes up against a finding of acquittal and a finding of acquittal can be converted into one of conviction only in an appeal under section 417.

21 DLR 384—Makhan Chandra Das Vs. Nimai Chandra Das—Evidence on record being the same to constitute an offence under section 404 Penal Code the conversion of offence from one under section 380 Penal Code to one under section 404 Penal Code (while maintaining the sentence passed by the trial Magistrate) does not prejudice the accused and as such the trial and conviction is valid in law.

21 DLR 145—Akbar Ali Vs. The State—Accused charged under one section and the courts found the accused guilty of another charge. The original charge having thus failed and subsequent charge not being put to the accused, the accused cannot be convicted for subsequent charge.

12 DLR 53 (SC)—Sultan Ahmed Vs. The State—Condition which must be fulfilled before a man charged with one graver offence can be convicted of a minor offence in respect of which no charge was framed.

7 DLR 99 (WP)—B. Fane Saunders Vs. Abdus Sattar—Once a court takes congnizance it is open to it subsequently to charge the accused with any offence, which appears to have been committed by him.

51 DLR 473—Parveen and another Vs. State—Where an accused person is charged with one offence and it appears in evidence that the committed a different offence for which he might have been charged in respect of a single act or series of acts, then, subject to absence of prejudice, the accused may be convicted of the offence, which he is shown to have committed although he was not charged with it.

54 DLR (HC) 298—Alam (Md) & another Vs. State (Criminal)—The trial Court committed gross mistake in passing sentence under different Penal provisions with which the convicted accused persons were not even charged.

21 BLD (HC) 413—Parvin and ano. Vs. The State—Where an accused person is charged with one offence and it appears

in evidence that he committed a different offence for which he might have been charged in respect of a single act or series of acts, then, subject to absence of prejudice the accused may be convicted of the offence, which he is shown in have committed although he was not charged with it.

24 BCR 336 (HC)—The State Vs. Ershad Ali Sikder & ors.—Accused charged under sertain section can well be convicted and sentenced under defferent section for offence under different section for offence when proved thereunder.

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

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

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

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

ILLUSTRATIONS

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

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

Scope and application—This section contemplates a conviction for a minor offence included in the offence charged in either of the two cases : (i) Where the offence charge consists of several particulars, a combination of some only of which constitutes a complete minor offence and such combination is proved but the remaining particulars are not proved. (ii) Where facts are proved which reduce the offence charged to a minor offence. Where the charge is for a major offence but a minor offence is proved, the accused may be convicted of the latter.

53 DLR (AD) 50—The accused raised no objection on the score of defect in charge at any stage of the trial. The objection raised for the first time in the Appellate Division is not entertainable by virtue of explanation appended to section 537 of the Cr.P.C.

45 DLR 660—State Vs. Sree Ranjit Kumar Pramanik—An offence to be a minor offence to a major one must be a cognate offence to the major one, having the main ingredients in common.

24 DLR 57—Tamiza Khatun Vs. The State—Abetment of an offence is not a minor offence within the meaning of section 234 Cr. P. C. The substantive offence and its abetment are two distinct offence and each has got its ingredients. A charge for substantive offence gives no intimation of a trial to be held for abetment.

20 DLR 455—Chand Meah Vs. The State—Under section 238 when a person is charged with an offence consisting of several particulars, a combination of some only of which constitute a complete minor offence, and such combination is proved he may be convicted of the minor offence though he was not charged with it. The section further provides that when a person is charged with an offence, he may be convicted of the minor offence, although he is not charged with it (Ref : 6 BLD 402).

14 DLR 701—The State Vs. Abed Ali—Person charged, where circumstances will permit, with commission of the substantive offence, can be convicted for abetment of commission of that offence even though not so charged.

8 DLR 135 (SC)—Md. Farooq Vs. The State—When a person is charged with one offence, he may be convicted of another if no prejudice is caused (Ref : 3 DLR 144, 8 DLR 21 (WP), 12 DLR 53 (SC), 15 DLR 466).

51 DLR (AD) 33—Abdur Rahman and others Vs. State—an offence under section 342 of the Penal Code which is not included in the schedule of the Special Powers Act cannot be the basis of conviction as the same is a non schedule offence.

Had the original offence charged been one under Penal Code then the learned Judges by application of section 238 of the Penal Code could come to a finding that the offence constitutes a minor offence and in that view could have convicted the appellant under a minor offence, but here the original offence charged was exclusively triable by the Special Tribunal and in that view the alteration of the conviction from a schedule offence to an offence which is only referable under Penal Code is not legally permissible.

49 DLR 528—Shamsul Haque and another Vs. State—It is true that no charge was framed against the accused under section 25B(2) but in view of the provisions of section 29 of the Special Powers Act and sub-section (2) of section 238 of the Code of Criminal Procedure, he may be convicted under sub-section (2) of section 25B of the Special Powers Act, 1974.

7 BLT (AD) 225—Abdur Rahman & Ors. Vs. The State—The alteration of the conviction from a schedule offence to an offence which is only referable under Penal Code is not legally permissible. Alteration of the conviction under section 342/34 of the Penal Code cannot be legally and lawfully done while disposing of an appeal arising from the jurisdiction of the Special Tribunal under Section 30 of the Act.

6 MLR (AD) 70-76—In a case where the charge for major offence fails but minor offence is proved in connection with the same occurence the accused may well be punished for the minor offence even though no such charge was formed as provided under section 238 of the Cr.P.C.

6 MLR (AD) 70-76—Rajib Kamrul Hassan and three others Vs. The State—Punishment for minor offence when found

proved in a case of charge framed for major offence- In a case where the charge for major offence fails but minor offence is proved in connection with the same occurence the accused may well be punished for the minor offer even though no such charge was framed as provided under section 238 of the Code of Criminal Procedure.

239. What persons may be charged jointly.—The following persons may be charged and tried together, namely:—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) Persons accused of offence under section 411 and 414 of the Penal Code or either of those sections in respect of stolen property the possessions of which has been transferred by one offence; and

(g) Persons accused of any offence under Chapter XII of the Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

Scope and application—This is an enabling section and the discretion rests with the court whether it will, in a particular case, exercise the power of trying more than one person jointly even in cases which are covered by the section. The manner in which the discretion to hold a joint or separate trial should be exercised depends on the facts of each case. It should be exercised fairly. The question of joint or several trials is always in the discretion of the presiding Judge. There is no provision in the Code for splitting up of the offences at the inquiry stage. If the Magistrate directs the splitting of the challan before the stage of trial is reached he does not commit any irregularities (39 Cr. LJ 596).

53 DLR (HC) 287—The section 235 empowers trial of a person for more offences than one if those are committed in the same transaction but section 239 provides for persons accused of different offences committed in the course of the same transaction.

44 DLR 277 (AD)—State Vs. Constable Lal Meah—Joinder of charges—Sameness of transaction—Circumstances which must bear on the determination whether certain acts or events constitute a single transaction in each individual case are proximity of time, proximity of place, continuity of action and community of purpose or design. Which factor or factors shall be given relative importance depends on the facts of each case. Sameness of transaction—Defect—If there is good evidence that the transaction was one and the same, then mere absence of certain links in the accusation will not make the trial illegal. If at all it is a defect which is curable under section 537 Cr. P. C. Misjoinder of charges—Validity of trial—In a case where it is found that the trial is vitiated by misjoinder, then in the eye of law there has been no valid trial and therefore, an accused cannot be acquitted after setting aside conviction (Ref: 40 DLR 377, 16 DLR 349).

1 BSCD 151—Afzal Vs. Feroza Peshkar—There can be no question of misjoinder of charges where all offences are committed in the course of the same transaction (Ref : 12 DLR 55 (WP)).

29 DLR 250 (SC)—K.M. Hussain Vs. The State—Clause (d) of section 239 Cr. P. C seems to be the appropriate provisions of law applicable in the instant case as clause (d) of section 239 of the Code provides that persons accused of an offence and persons accused of abetment may be charged and tried together (Ref : 29 DLR 157).

16 DLR 233 (SC)—Noor Ahmed Vs. The State—Joint trial of offences or persons is discretionary with the court. Where joint trial is wrongly held, the trial is illegal irrespective of the question of prejudice (Ref : 15 DLR 55 (WP), 12 DLR 424).

10 DLR 134 (SC)—Babar Ali Biswas Vs. The State—Misjoinder of charges under section 147 and 342 Penal Code. trial vitiated.

10 DLR 29 (SC)—Md. Musaddar Huq Vs. The State—Joint trial, not legal unless offences charged are committed in the same transaction. When a trial is held in a mood different from that laid down in the Code it is bad and no question of prejudice arises. Community of purpose of design and continuity of action are essential elements.

10 DLR 26—Fakku Meah Vs. The State—Usual criteria applied for determining whether offences arose out of the same transaction. In a charge of conspiracy, all manner of acts, whether or not they are done in pursuance of the conspiracy, cannot come under clause (d) of section 239 Cr. P. C. Infringement of section 239 (d) leads to an illegality and not a mere irregularity (Ref : 10 DLR 61).

6 BLC (HC) 511—Mostafa Kamal Dayna and another Vs. State (Criminal)—The offences have been committed in course of the same transaction. Under such circumstances putting the accused persons on trial in eight cases separately would entail unnecessary harassment and there will be wastage of court's time as well. Under the provision of section 239, Cr.P.C a joint trial of several accused is permissible. Accordingly, a direction was given to the court below to consolidate the cases and to hold joint trial under section 239 of the Code.

53 DLR 59—Nurul Islam Monzoor Vs. State and another (Criminal)—Working days should be understood to mean

actual working days during which the learned Judge holds the Court.

Nurul Islam Monzoor Vs. State and another (Criminal) 53 DLR 59. Section 339(4)-There is no absolute direction to allow bail, even in case of failure to complete the trial within the statutory period, as the mandate, if any, for allowing bail is subjected by the words, 'unless for reasons to be recorded in writing, the Court otherwise directs'.

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

Scope and application—This section applies only to charges framed in the same case and not to separate charges of distinct offences tried separately. The word 'court' in this section does not mean only the trial court but includes every grade of court including the court of revision. If the complainant withdraws the application for revision, the withdrawal amounts to withdrawal of the charge and accused shall be acquitted (30 Cr. LJ 1089).

5 DLR 26—Abul Mansur Rahman Vs. The Crown—A Magistrate is bound to pass judgment on each charge and pass an order of acquittal or conviction, unless it is withdrawn or stayed, Inference to be drawn when no conviction was recorded, accused not guilty (Ref: 44 DLR 277 (AD)).

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CHAPTER—XX

OF THE TRIAL OF CASES BY MAGISTRATES

241. Procedure in cases.—The following procedure shall be observed by Magistrates in the trial of cases.

Decision

38 DLR 240 (AD)—Mohitullah PK. Vs. State—An accused shall be tried in accordance with the procedure prevailing on the day when the trial commenced—If the procedure is changed by the time when the trial commences, he cannot claim a vested right to be tried in accordance with the procedure prevailing before that. Appearance of an accused before the Court is a condition to make a trial a pending trial. Accused appeared and the case was taken up for hearing on 16.3.81. From this moment trial is said to be pending. 'Trial' meaning of.

6 MLR (HC) 130-133—Ayub Ali alias Md. Ayub Ali and another Vs. The State—Section 241A and 265C—Discharge of accused where cannot be made-on ground of misjoinder of charge-

Special Powers Act, 1974-Section 25A-Counterfeiting currency notes-

Penal Code, 1860-Section 498A-498D-Counterfeiting currency notes-Joint trial of schedule and non-schedule offence-Permissibility of-

Though joinder of schedule and non-schedule offence in a trial is not usually permissible under the Special Powers Act, 1974 but where schedule and non-schedule offence such as that of section 25A of the Special Powers Act, 1974 and sections 498A-498D of the Penal Code fall in the same definition joint trial of schedule and non-schedule offence in such circumstances can not be held to be impermissible in law in view of the fact that the offence defined under both the law constitutes same offence. Discharge of accused on such ground cannot be claimed.

241A. When accused shall be discharged.—When the accused appears or is brought before the Magistrate, and if the

Magistrate, upon consideration of record of the case and the documents submitted therewith and making such examination, if any of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, considers the charge to be groundless, he shall discharge the accused and record his reasons for so doing.

Scope and application—This section is new. The procedure prescribed by this section should be strictly followed. An order of discharge can be made only according to the words of the section that no case has been made out. The Magistrate should first take into consideration (a) in police case, the prosecution case as given in FIR, charge-sheet, statements of witnesses recorded by police and the documents produced including medical certificate and (b) in complaint case, the petition of complaint, statement of witnesses recorded during judicial enquiry, report of enquiry officer and medical certificate if produced and also hear the defence and then apply the law to the Criminal acts to find whether there is primafacie case and the Magistrate can discharge the accused if no case has been made out.

45 DLR 533—H.M. Ershad Vs. The State—This provision casts a duty on the Judge to discharge the accused when there is no ground for proceeding with the case and his order must record reasons therefor. The Court has jurisdiction to pass an order of discharge if it was satisfied that the charge was groundless for which it was to give reasons but if it framed charge it was not required of the court to record reasons.

45 DLR 606—Abul Ahsan Joardar Vs. Kazi Misbahul Alam—The trying Magistrate is required to exercise his own independent judgment and to see whether there is a prima facie case to proceed with the trial. The report of the judicial Magistrate cannot be binding on the trying Magistrate.

45 DLR 722—Shariful Islam Vs. Billal Hossain—The trial court has a wide power to frame charges and this cannot be interfered with by the Revisional Court by way of giving direction for altering a charge or framing a charge.

43 DLR 63 (AD)—Nannu Gazi Vs. Awlad Hossain—Magistrate cannot discharge accused persons on the plea of alibi that they were at different places at the time of commission of offences alleged by the prosecution—Magistrate's 'finding' in this regard is based on no evidence. Mere submission of some papers supporting alibi is neither sufficient nor admissible as the stage of adducing defence evidence was yet come Magistrate's order of discharge was not sustainable as it was based on gross misconception of law (Ref: 11 BLD 110 (AD)).

40 DLR 310—The State Vs. Md. Shafiqul Islam—Provision of section 241A is to be strictly followed. An order of discharge can be made only when no case is made out against the accused. The impugned order of discharge shows that the trial Judge did not consider the F.I.R.; Charge-sheet, statements of witnesses recorded under section 161 of the Code of Criminal Procedure and the documents relating to the forging of the cheques and other documents. The order of discharge has been made on a total non-application of judicial mind to the meterials on record. There being a prima facie allegation it was incumbent on the trial court to frame the charge against the accused.

38 DLR 4—Haji Azizur Rahman Vs. Syeedul Haque Chowdhury—Section 241A, Criminal Procedure Code does not authorise a Magistrate to pass arbitrary order of discharge. He has to comply with certain requirements. He must assign cogent reason and should come to a finding that the charge is groundless and in doing so, in a complaint case, such as the present one, he should consider the petition of complaint, the documents submitted, statements of witnesses recorded during judicial enquiry, if any, report of the inquiring officer, if any, medical certificate if producted, make such examination if any, of the accused, as the Magistrate thinks necessary and also hear the parties. The Learned Magistrate did not come to any finding that the charge is groundless which expression in the said section 241A Cr. P. C apparently means that he has to give reasons and find that there is no prima facie case warranting framing of the charge or charges. Grievance of the

complainant party suffering wrong at the hand of the accused should have full scope to present its case. Just as the accused is to be presumed innocent till he is proved to be guilty (Ref : 5 BCR 259, 7 BLD 335).

35 DLR 213—Saber Ahmed Vs. Monzur Meah—The words 'opportunity of being heard' to be understood as meaning that the parties can argue their respective cases in favour of framing a charge or for discharging the accused. Accused may be discharged even without examination of any witness. Before framing a charge it will not be proper to allow parties to adduce evidence (Ref : 6 BLD 7 (AD)).

23 BLD 420 (HC)—Syed Ahmed Chy Vs. Abdur Rashid Mridha & ors.—Can perusal of the FIR the role of the accused opposite parties is not clear. Similarly is the charge-sheet no such material is disclosed against the accused as to their involvement in the commission of alleged offence. In the absence of any material disclosing any offence alleged to have been committed by the accused, the impugned order discharging them from the charge, does not call for interference.

16 BLD 264 (AD)—Most. Rahela Khatun Vs. Md. Abul Hassan and others—A criminal proceeding cannot be quashed under section 561A Cr. P. C. on the basis of defence materials which are still no part of the record of the case.

19 BLD 265 (AD)—Gazi Mozibul Huq & Ors. Vs. Abid Hossain Babu—From the prosecution case as set out in the petition of complaint has got prima facie ingredients of the offence alleged. The exact nature of the offence against the accused petitioners can only be thrashed out upon a trial.

6 BLD 7 (AD)—Md. Wasefuddin Vs. Habibur Rahman—Principal of a private College should not be prosecuted without concurrence of the Governing Body at the instance of private individul.

50 DLR 337—Forhad Hossain and others Vs. State— Trial Court has a wide power regarding framing of charge. This cannot be interfered with lightly either by the revisional court or on the appellate Court.

51 DLR 408—Jalaluddin Bhuiyan Vs. Abdur Rouf and others—The time of producing defence alibi is during the trial and after the prosecution has adduced its own evidence and they must be given a chance to prove their case. (Ref. 3 MLR (HC) 101).

48 DLR 95—Hossain Mohammad Ershad [former President Lieutenant General (Rtd)] Vs. State—The Sessions Judge is directed to allow the advocates of the accused to go through the papers and documents upon which the prosecution will rely for framing charges in the case.

50 DLR 301—Rustom Ali Matubbar alias Alam Vs. Mohammad Salahuddin and another—The accused-petitioner, if he would have felt aggrieved, against the order passed by the Magistrate framing charge against him, could have invoked the jurisdiction of the Sessions Judge under section 439A for the relief. The inherent jurisdiction of the High Court Division has been wrongly invoked.

50 DLR 103—Nazrul Islam Vs. State—অভিযোগ গঠন বিষয়ে শুনানীর সময় আসামীর দাখিলী প্রমাণ তথা দলিল পত্র বিবেচনা করা যায় না এবং তার ভিত্তিতে আসামীর বিরুদ্ধে মামলা বাতিল করা যায় না।

51 DLR (AD) 159—Latifa Akhter and others Vs. State and another—An accused can only prefer an application under section 561A for quashing the proceeding if he becomes previously unsuccessful in his application either under section 265C or 241A, otherwise his application for quashing shall be premature.

Section 265C speaks of discharge of an accused in a trial before Court of Sessions. Section 241A speaks of discharge in a trial by a magistrate. These sections indicate that when an accused is brought for trial before a Court of law the Court upon hearing the parties and on consideration of the record of the case and the documents may discharge the accused. These sections have nothing to do with quashing of a proceeding. Section 561A is an independent inherent power of the High Court Division of the Supreme Court and this power can be exercised in case of abuse of process of Court and for securing the ends of justice and or to give effect to any order under the Code ref.

3 MLR (HC) 213—Forhad Hossain (Md). and another Vs. The State—Discharge of accused when the charge is groundless—The trial court enjoys wide prower to frame charge on the basis of meterials on record. The previous statements of the witnesses recorded under section 164 Cr.P.C can only be used at the time of trial for the purpose of contradiction under section 145 of the Evidence Act, 1872. When charges are framed by the trial court on the basis of statements of the witnesses recorded under section 161 Cr. P. C this can not be interfered with lightly on the basis of statements recovered under section 164 Cr. P. C which can not be used before trial. However law does not permit to keep the victims in judicial custody for indefinite period. (Ref. 51 DLR 337).

4 MLR (HC) 55—Abid Hossain Babu Vs. Gaji Mojibul Hoque & Others—Accuseds may be discharged when the allegations are found groundless on the basis of materials on record. Special Judge cannot discharged the accused on extraneous matters beyond the record, be that under section 241A or 265C of the Cr. P. C.

2 MLR (AD) 249—Surendra nath Goswami Vs. Halena Herlovi and others—Discharge of accused under section 241A of the Code of Criminal Procedure is not proper when there are prima facie materials on record for framing charge. Magistrate is bound to proceed with the trial of the case when the discharge order is setaside by Additional Sessions Judge in exercise of his revisional jurisdiction. The learned Additional District Magistrate discharging the accused again ignoring the order of the learned Additional Sessions Judge can well be subjected to proceedings calling upon him to explain his conduct. [Ref. 4 BLT (AD) 67; 3 BLC (AD) 52].

20 BLD (HC) 72–A. H. Babu Vs. G. M. Haq & Ors—The learned Special Judge discharged the accused persons considering the some extraneous meterials which were not available either in the complaint petition or in the record and as such the Special Judge acted beyond his jurisdiction be that it under section 241A or 265C of the Code discharging the accused by illegally relying upon some extraneous materials which were not in the record.

8 BLT (HC) 220—Mohammad Nazrul Islam Chowdhury & Ors. Vs. Abul Bashar Chowdhury & Ors—In the instant case the F. I. R., the charge sheet and the Medical report were on record. The learned Magistrate could also call for the case diary of the police containing the statements of the witnesses recorded under Section-161 of the Code of Criminal Procedure. These are the case records and the documents submitted therewith within the meaning of Section-241A of the Code. The learned Magistrate ought to have considered these papers but without considering any of those papers discharged the accused persons only on mere surmises and conjectures, as such, his order of discharge purported to have made under Section-241A was wrong and illegal.

3 BLT (AD) 129—Hashim Vs. The State—The High Court Division can quash the proceedings of a criminal case under Section 561-A Cr. P. C even during police investigation if no cognizable offence is disclosed-----this view has been approved in the case of Emperor Vs. Nazir Ahmed A. I. R (32) 1945 P. C. 18-------the view that it will be premature invoked 561-A Cr. P. C. before availing of the remedy provided in 241-A Cr. P. C. and 265C Cr. P. C has been disapproved by the Supreme Court Appellate Disvision as being not correct.

5 MLR (AD) P-63—Mozibul Haque (Gazi) and others Vs. Abid Hossain Babu—Accused cannot be discharged under section 241A/265-C of the Code of Criminal Procedure, 1898 when there are prima facie ingredients of the offence alleged to stifle the prosecution before trial. The nature of offence can well be thrashed out in the trial.

7 BLT (HC) 33—Abid Hossain Babu Vs. Gazi Mojibul Haque & ors—The learned Divisional Special Judge should discharged the accused persons solely on the basis of the complaint petition and the other materials on record.

The learned Judge discharged the accused persons considering the some other grounds which were not available either in the complaint petition or in the record. So, it is held that the learned Special Judge acted beyond his jurisdiction be that it under Section 241A or 265C of the Code of Criminal

Procedure by illegally relying upon some extraneous materials which were not in the record. So, the order of discharge is illegal.

5 BLT (AD) 67—Samarendra Nath Goswami Vs. Halena Herlovi & Ors—The Audit report at the state of framing of the charge—Accused. Petitioner was discharged under Section 241A of the Code of Criminal Procedure by the Learned Additional District Magistrate—Held : While Framing the charge extraneous materials could not be considered at all-the petition is dismissed.

6 MLR (HC) 338-—Shah Alam Vs. The State and another—Discharge of accused on plea of alibi-not permissible- Plea of alibi by way of defence can only be taken during trial subject to satisfactory proof thereof. At the time of framing charge the court or Magistrate has to see only if the prosecution has been able to establish prima-facie case against the accused to go for trial. Accused can not be discharged on plea of alibi at this stage.

6 BLC 282—Taher Hossain Rushdi Vs. State (Criminal)—Sections 241A, 242, 256C, 265D(1) and 439—In the instant case there are detailed allegations against the accused petitioner and his accomplices and during the investigation it is revealed that the papers produced before the investigating agency were also examined by the handwriting expert and it was found that the documents in question and bills and vouchers were fictitious and hence there is no illegality in framing charges against the petitioners and the Rules are discharged.

5 BLC 345—Ayub Ali alias Md Ayub Ali and another Vs. State—Section 241A and 265C—The learned Special Tribunal committed no illegality in framing charge against the appellants under section 489A -489D of the Penal Code read with section 25A of the Special Powers Act after taking cognizance of the offence of counterfeiting currency-notes joining togather for trial the schedule and non-schedule offences as before commencing the trial it cannot be said that

the accused appellants are likely to be prejudiced by such misjoninder as the framing of such charge for a schedule and non-schedule offence cannot be said to be altogether without jurisdiction.

242. Charge to be framed.—If, after such consideration and hearing as aforesaid, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, the Magistrate shall frame a formal charge relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged.

Scope and application—This section is new. The Magistrate before taking any evidence but considering the provision of section 241A Cr. P. C shall frame charge. A charge under this section should allege all that is necessary to constitute the offence charged. The conditions for the framing of a charge are presumption of the commission of an offence on materials before the court. Charged should be framed on perusal of papers as contemplated under section 241A Cr. P. C and without examining any witness. The framing of charge needs the following conditions namely: (a) the existence of a prima facie case on the basis of materials before the court (b) the offfence being triable under Chapter XX (c) the Magistrate's competency to try and (d) the Magistrate's power to inflict adequate punishment. On the fulfilment of these conditions, charge should be framed.

45 DLR 533—H.M. Ershad Vs. State—Consideration of the statements made under section 161 Cr. P. C while framing of charge or otherwise is a necessary part of the Court's duty. The court has jurisdiction to pass an order of discharge if it was satisfied that the charge was groundless for which it was to give reasons but if it framed charge. It was not required of the court to record reasons. The case having been sent to the Special Judge after taking cognizance by the Senior Special Judge there is no illegality in the adding of a fresh charge by the former.

45 DLR 722—Shariful Islam Vs. Billal Hossain—The trial court has a wide power to frame charges and this cannot be interfered with by the Revisional Court by way of giving direction for altering a charge or framing charge (Ref : 13 BLD 392).

36 DLR 14 (AD)—Nasiruddin Mahmud Vs. Momtazuddin Ahmed—Criminal proceeding starts after cognizance by court is taken. 'Initial stage' does not mean any stage prior to submission of the charge-sheet by the police, but it means a stage after submission of the charge-sheet.

34 DLR 413—Bashiruddin Ahmed Vs. The State—In the accusation under section 242 Cr. P. C the accused should be told specifically that he is being charged with the offence of preparation for commission of the main offence, so that the accused gets a full and adequate opportunity to depend himself against such charge (Ref : 21 DLR 62 (WP), 26 DLR 350).

15 DLR 76 (WP)—M. Anwar Vs. Shadat Khayali—An accused does not plead to a section of criminal statute. He pleads guilty or not guilty to the facts which purports to disclose an offence under that section.

16 BLD (AD) 27—Mr. Moudud Ahmed Vs. The State—While framing charge the trial Court is only to see if on the basis of the materials on record a prima facie case to go for the trial has been made out against the accused persons.

243. Conviction on admission of truth of accusation.—If the accused admits that he has committed the offence with which he is charged, his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

Scope and application—A plea of guilty is an admission of all the facts on which the charge is founded as well as an admission of guilt in respect of them. The plea of guilty with qualifications does not amount to a plea of guilty charge. A plea of guilty refers not to any section of the criminal statute but to acts alleged against the accused. Section 243 applies to

case tried summarily by virtue of section 262. As the right of appeal depends on whether there was in law a plea of guilty, it is important that the exact words of the accused, as nearly as possible, should be recorded. Magistrate's have to remember that a conviction on Admission is not final. It is open to revision and the superior court has to be satisfied that what was thought to be an admission was really so and for that purpose the admission must be recorded in own words of the accused. The Magistrate has discretion to accept the plea of guilty or not to accept. Accused cannot be convicted on his admission unless the facts admitted amount to an offence (Ref : 10 DLR 346).

46 DLR 238—Saheb Ali Miah Vs. State—He alleged admission of guilt was not recorded as nearly as possible in the words used by the accused. Section 243 Cr. P. C is mandatory, the violation of which causes prejudice to the accused and is not curable under section 537 Cr. P. C. (Ref : 3 BLT (HC) 110).

40 DLR 398—Ali Newaj Bhuiyan Vs. The State—Violat on of the mandatory requirements of Section 243 in recording the individual statements of the accuseds either in their language or in words as nearly as expressed by them is not curable by section 537. Conviction and sentence are not substainable in law accordingly (Ref : 20 DLR 461).

7 BLD 430—Abdul Latif Vs. The State—Admission of guilt by the accused—Whether the accused can be convicted solely relying on such admission—Whether such admission is to be recorded in the language of the accused—The reply of the accused while pleading guilty to the charge should be set down as nearly as possible in his own words and that having not been done the court is not in a position to know what he actually admitted. It is not safe at all to base the conviction on the plea of guilty alone by the accused in case of murder.

6 BLD 1 (AD)—Md. Khalil Uddin Vs. State—Criminal trial—Whether defence suggestion can be taken as the basis for conviction. In the existing scheme of criminal trials an accused can be convicted either on his pleading guilty to the charge or on his confession under section 164 Cr. P. C or

extra-judicial confession if strongly corroborated. Suggestion by lawyer cannot be construed as admission of guilt.

22 DLR 124—Serajul Huq Master Vs. The State—Plea of guilt does not amount in law that the accused has committed the offence. Court's duty is to see whether the facts brought on record amounts to an offence in law.

14 DLR 121—The State Vs. Satyapada Biswas—Conviction is legal solely on the confession of the accused. If the accused himself admits his guilt there is no necessity to enter into the whole gamut of a legal trial.

11 DLR 514—Habibur Rahman Vs. The State—A conviction without taking of any evidence and purporting to be based on a plea of guilty cannot be sustained when the accused denies having pleaded guilty and the said plea is not found recorded in accordance with the provision of section 243 Cr. P. C (Ref : 7 BLD 432).

3 BLT (HC) 110—Md. Shaheb Ali Miah Vs. The State—The provisions of Section 243 Cr. P. C are mandatory and in violation of the same, the so-called admission or pleading of guilt of the accused appellant has been recorded and as a result he has been seriously prejudiced against the appellant on the basis of such-so-called admission of guilt cannot therefore be sustained in law the case should be sent back remand to the Trial Court.

Revision—A plea of guilty bars the remedy of appeal under section 412; it does not bar a revision under section 435 and 439A or 439 Cr. P. C (PLD 1967 Kar 608).

244. Procedure when no such admission is made.—(1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution and also to hear the accused and take all such evidence as he produces in his defence :

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

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

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

Scope and application—This section merely says that the Magistrate shall hear the complainant; it does not say that the complainant is to be examined. Non-examination of the complainant does not vitiate the proceedings. Moreover, the Magistrate is bound to hear the accused and his witnesses, i. e., all the witnesses that are produced by the accused. The Magistrate has no discretion in this matter. The Magistrate must base his decision on the evidence produced on either side in court. This section is intended to supply a procedure for the expeditious trial cases by Magistrate. The parties have the right to examine witness. Case should not be decided on special oath (28 Cr. LJ 301). The right of cross-examination is exercisable under this section. The accused has no right to postpone the cross-examination of any prosecution witness but if cross-examination is postponed in accordance with the direction of the Magistrate he is bound to give the accused further opportunity to cross-examine the witness. If that is not done the evidence will not be legally admissible and the irregularily will vitiate the trial (23 Cr. LJ 440).

42 DLR 176 (AD)—Atiqur Rahman Vs. State—Criminal Trial—Defence plea, when not acceptable—Plea of inadvertance, liable to be rejected if not taken during the trial but argued subsequently.

35 DLR 41—Saad Ahmed Vs. State—Witnesses examined though not mentioned in the FIR or in the charge-sheet and

making serious allegation against the accused-cannot be relied on.

35 DLR 1—Fazlul Huq Haider Vs. The State—When the witnesses and the accused persons on the date fixed for trial have to come to Court. The trial Court must not repeat. Must not adjourn the case without examining all the witnesses who have come. Once a person becomes a prosecution witness, he has to come to court on almost infinite number of occasions incurring heavy expenses and sacrificing daily work for earning his livelihood. Sessions Judge has no power to issue process against an accused not sent by Magistrate.

6 BLD 34—State Vs. Mokbul Hossain—Delay in examination of witness by the investigating officer—Whether evidence of such witness given before the court should be left out of consideration—We leave the evidence of PW 7 out of consideration because he was examined by the investigating officer after $1\frac{1}{2}$ month of the F.I.R.

21 DLR 62 (WP)—Md. Sadiq Javeed Vs. The State—Magistrate is competent to abandon subsequently a defence witness who though considered by him to be unnecessary, was nevertheless summoned.

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

(2) **Sentence.** Where the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

Scope and application—It is not open to the Magistrate to refuse to examine the complainant and the witnesses produced by the complainant and the acquittal of the accused without recording any evidence is clearly illegal (33 Cr. LJ 274). The Code makes no provision for acquittal of accused persons without examining witnesses. A Magistrate, who does not find the accused guilty, must record an order of acquittal. No

order of discharge can be passed under this section (2 Cr. LJ 468). Even if he styles his order as an order of discharge, the discharge will amount to an acquittal. If the Magistrate convicts the accused, he is bound to pass some sentence.

38 DLR 311 (AD)—Muslimuddin Vs. The State—Accused presumed to be innocent of the charge till guilt is established by legal evidence. No particular number of witnesses legally required to prove the offence.

38 DLR 82—Moulana Ahmadullah Vs. The State—Trial of a criminal offence adjourned several times for absence of the accused. The prosecution witnesses were present for cross examination on numberous dates such 12.2.82, 15.2.82, 21.4.82 and 1.6.82 and on all those dates the case was adjourned mostly due to the absence of the accused and one on account of the learned Magistrate being engaged. On 5.10.82 the accused was absent and also 7P. Ws. were absent. The trying Magistrate expunged the depositions of these P.Ws. on the plea they were not present or tendered for cross-examination. Held; This is illegal. On 5.10.82 when the impugned order of acquittal was passed the accused himself was absent but still the learned Magistrate expunged the evidence all the 7 P. Ws who were competent official witnesses in respect of the alleged occurrence simply because those witnesses were not prsent or tendered for cross-examination on that date. Appeal in this case being incompetent the proceeding were converted into a revisional proceeding and the order of acquittal is set aside (Ref : 33 DLR 12).

49 DLR (AD) 36—Mobarak Ali and others Vs. Mobaswir Ali and others—The prosecution having not taken any steps the learned Magistrate rightly acquitted the respondents under section 245(1) of the Code of Criminal Procedure. (Ref. 1 MLR (AD) 23).

9 MLR 235-238—Mosharraf Hossain Sheikh (Md.) Vs. Abdul Kader and others—Release of accused under section 249 is not a acquittal—When there are case and counter case over the same occurrence both the cases should be tried simultaneously by the same court. Proceedings stopped under section 149 Cr.P.C. can well be revived since the release

thereunder is neither acquittal nor discharge as provided under section 245 Cr.P.C.

246. Omitted.

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

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

Scope and application—This section only contemplates an order of acquittal or of adjournment. An order striking off a case or dismissing a complaint is not within the terms of the section. But such an order, if passed in the circumstances mentioned in the section, will amount to an order of acquittal. This section is now applicable to complaint case as well as police case in view of the amendment vide Ordinance No. LX of 1982 dated 30.12.82 and Ordinance No. XXIV of 1982 dated 21.8.82. If the complainant or the informant or somebody on behalf of the informant do not appear at the time of hearing, court is not bound to wait for the complainant or for the informant or for the court's Inspector till the court closes for the day although this section does not speak of a particular time. But the prosecuting agency or the complainant should be present at the time when the case is called on for hearing (27 Cr. LJ 988). The word 'hearing' has not been defined in the Code. This section has nothing to do with the presence or absence of the accused. If the prosecuting agency, is absent the case must be dismissed and the accused acquitted. An acquittal under this section does not stand on any different footing from an acquittal passed under any other circumstances, and the Magistrate cannot set aside his own order of acquittal (AIR 1953 Cal. 197).

56 DLR 205 (HC)—G.M Morshed Vs. City Bank Ltd. & ors.— It is necessary for the Magistrate before dismissing the complaint to see whether the complainant had been dilatory in the prosecution of the case or not.

56 DLR 614—Tofael Ahmed Vs. Chand Mia, State—Power to dismiss the case is undoubtedly there when the complainant is found absent but that power must be exercised judicially and it must be seen and considered having regard to the circumstances of a given case.

46 DLR 330—Ayub Ali Bangali Vs. Meah Manir Ahmed— The Magistrate had no reason to adjourn hearing of the case as neither the complainant nor his advocate appeared and took any steps whatsoever. The Magistrate was therefore bound to acquit the respondent.

42 DLR 257—Mohammed Musa Khan Vs. Farookh Hossain—Acquittal—Accused present but complainant absent in Court—Complainant filed an application for adjournment through his advocate. No order was passed by the Magistrate on the adjournment application—He acquitted the accused of all charges—The order of acquittal was not in keeping with law.

41 DLR 321—Haji Hafez Md. Shamsul Islam Vs. Abdul Mabud— Applicability of section 247 Cr. P. C—Case to be originated from a petition of complaint and summons to be issued following the complaint—But warrant was issued in the present complaint case and the necessary condition such as issuance of summons for the application of the section is absent—After amendment there is no distinction between summons case and warrant case at the trial stage. Interpretation of Statute—Words 'Summons' and 'Warrant' Meaning of—Whether they convey different modes of processes to compel appearance—Whether there is scope to interpret the Summons' to include 'Warrant' Court cannot put a word in legislation which is not there. Section 247 Cr. P. C shall apply to a case in which summons has been issued on complaint and shall not apply to a case in which warrant has been issued though on complaint.

41 DLR 219—Sultan Ahmed Vs. Golam Mostafa—Bias patent on the part of the Magistrate High Court Division under Criminal Revisional Jurisdiction has found it appropriate to interfere with the impugned order of discharge under section 119 Cr. P. C—The opposite parties were ordered to be bound down to keep peace without sending the case back on remand.

39 DLR 272—Mst. Aziran Khatun Vs. Abu Tayeb Md. Iqbal—If the complainant remains absent on the date fixed for hearing or in subsequent dates—though the accused appeared as directed the court must acquit the accused.

39 DLR 103—Golam Nasir Vs. Abdul Aziz & ors—Three conditions in the matter of acquittal under section 247 Cr. P. C.—Acquittal order illegal in case of non-existence of these conditions. In order to make an order under section 247 Cr. P. C three conditions are to be satisfied. There should be service of summons, secondly, the date fixed should be the date for appearance and thirdly, on that date the complainant is to be found absent (Ref : 6 BLD 303).

6 BCR 156 (AD)—Syed Ruhul Vs. Afazuddin Dewan—Wrong mention of the section in the Code of Criminal Procedure, regarding acquittal or discharge of the accused cannot affect the merit or result of the case under the circumstance of the present case. By the Law Reforms Ordinance there had been amendments in procedural law. All trials before the Magistrate are to be held under summary procedure and Chapter XX section 247 provides for acquittal of the accused persons if the complainant is found absent.

37 DLR 107—Md. Taher Uddin Vs. Abul Kashem—A Magistrate however can acquit an accused if the complainant remains absent on the day fixed for accused appearance. There is thus no scope for recording an order of acquittal merely because the prosecution witnesses were not present on the date of trial.

36 DLR 349—Md. Islam Vs. The State—In a complaint case, when the complainant does not appear, it is imperative on the part of the Magistrate to acquit the accused, unless the

Magistrate thinks proper to adjourn the hearing of the case to some other day.

28 DLR 74—Mantu Meah Vs. Aklakur Rahman—'The complainant does not appear' means that the complainant having knowledge or information of the date of trial fails to appear.

6 DLR 30—Sreejan Hôwladar Vs. Asmat Ali Howladar—The complainant himself was present in court on the day fixed for cross examination of the prosecution witnesses but his witnesses did not put in any appearance, whereupon the Magistrate, without waiting for them, expunged their evidence and recorded an order of acquitting the accused. Held : The order acquitting the accused cannot be maintained.

Appeal—Where the order of acquittal under section 247 is legal and competent, it will not be interfered within appeal preferred under section 417 (3) Cr. P. C by the complainant, if the reason for his non appearance on the date fixed for hearing is unconvincing. No revision lies against an order under section 247 Cr. P. C.

4 BLD 15—Ayub Ali Vs. Sona Meah—An appeal would lie against the order of acquittal passed by the Magistrate under section 247 Cr. P. C in view of the amended provisions of section 417 (2) Cr. P. C and as such a revision against the order of acquittal is barred under section 439 (5) Cr. P. C.

24 BLD 286 (HC)—Md Habibur Rahman Vs. Feroj Ahmed & ors.—In the event wherein it is found that the petitioner is making default in appearing before the court intentionally and thereafter files fresh petitioners of complaint one after another with ulterior motive, the Magistrate should use his discretion in refusing to entertain fresh petition for the third time, if he finds cogent ground for prior defaults.

19 BLD 128 (AD) —Dewan Obaidur Rahman Vs. State and another—The language of section 247 of the Code having clearly empowered the concerned Magistrate to acquit the accused for the failure of the complainant to appear in the case on the date fixed for the appearance of the accused, it cannot be said that only the order of acquittal passed upon

holding full trial can create a bar under section 403 of the Code from entertaining a second complaint on the self-same allegations. So long as the order of acquittal, passed under section 247 Cr. P. C. remains inforce the provision of section 403 Cr. P. C. shall stand on the way of entertaining a second complaint on the self-same allegations.

51 DLR (AD) 119—Shajib (Md) and others Vs. Md Abdul Khaleque Akand and another—Summons must be issued for securing the attendance of the accused on the day appointed for hearing of the case. (Ref. 4 MLR (AD) 145).

6 MLR (HC) 70-72—Dismissal of complaint for non-appearance of complainant—unless the case is fixed for hearing or is fixed for appearance of the complainant the case as a matter of course cannot be dismissed for non-appearance for the complainant when adjourment was sought for on medical ground.

1 MLR (HC) 269—Ruhul Amin & another Vs. Rezia Begum & another—Implication of section 247 is altogether different from that of section 431 Cr. P. C. Failure of complainant to appear on the date of appearance of the accused or on any subsequent date of hearing does not confer any absolute right of the accused for acquittal.

52 DLR (HC) 394—Nabiran Bibi Vs. Md Panna Miah and others (Criminal)—It was for the Magistrate to ascertain before dismissing the petition of complaint whether the complainant was notified properly or whether she took delay dalling tactics in order to harass the accused inspite of receipt of notice issued by the Court.

8 BLT (HC) 62—A. Jabber Howlader Vs. Ali Akbar Howlader & Ors.—A complaint case out not to be dismissed for non-appearance of the complainant on an adjourned date unless he/she attends in the Court of the Magistrate is specially required on that date or unless the Trial Court is convinced that the complainant is not keen on prosecuting his case. In the instant case it appears that the complainant took adjournments by filing petition on the ground of illness supported by medical certificate and the impugned order bears no reasonings as to why the learned Magistrate dismissed the

petition for non-appearance of the complainant. It is not clear as to whether the learned Magistrate dismissed the petition of complaint holding that the claim of the complainant or that she is taking adjournment in order to harass the accused. In view of the such facts and circumstances we are unable to support the impugned order and as such the same is liable to be set aside.

52 DLR 329 (HC)—A. Jabber Howlader Vs. Ali Akbar Howlader and State—A complaint case ought not to be dismissed for non-appearance of the complainant on an adjourned date unless his attendance in the court is specially required on that date or unless the Court is convinced that the complainant is not keen about prosecuting his case.

4 BLT (AD) 149—M. Mofizuddin Vs. Abul Kalam & Ors—Section 247 Confers a discretion upon the trial Magistrate to adjourn the hearing of a Case, when the complainant fails to appear on the date, if the Court thinks that there are good reasons for non-appearance. Obviously, the trial Magistrate did not think it Proper to adjourn the hearing of the case when the Complainant failed to appear—the trial acquittal under section 247 of the Code of Criminal Procedure.

7 BLC (HC) 328—A Jabber Howlader Vs. Ali Akbar Howlader, State (Criminal)—A complaint case ought not to be dismissed for non-appearance of the complainant on an adjourned date unless his/her presence in the court of the Magistrate is specially required on that date or unless the trial Court is convinced that the complainant is not keen on prosecuting his case.

4 BLC (AD) 167—Dewan Obaidur Rahman Vs. State and another—Section 247, 403 and 561A—The alleged transaction between the complainant and the apppellant is clearly and admittedly a business transaction when the appellant had already paid a part of the money under the contract to the complainant, then the failure of the part of the appellant to pay the complainant the balance amount under the bill does not warrant any criminal proceeding as the obligation under the contract is of civil nature and hence the complaint case is quashed.

248. Withdrawal of complaint.—If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Scope and application—This section applies only in compoundable cases as mentioned in section 345 of the Code. The section requires, firstly that the complainant should make a request for the withdrawal of a complaint, secondly, that he should satisfy the Magistrate that there are sufficient grounds for the Magistrate permitting him to withdraw the complaint, thirdly, that the Magistrate should permit the withdrawal and lastly, that the Magistrate should acquit the accused after the withdrawal (AIR 1947 All 371).

249. Power to stop proceedings when no complainant.—In any case instituted otherwise than upon complaint, a Metropolitan Magistrate, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate, may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Scope and application—This section applies only where the case is instituted otherwise than upon complaint. The powers given to the Magistrate to stop the proceedings at any stage have to be sparingly used and that too in exceptional or unusual circumstances attending the case. In the absence of special or unusual circumstances which make it difficult or impossible for the Magistrate to proceed with the case, he can not invoke this section and stop further proceedings (1973 Cr. LJ 82).

41 DLR 477—Fazlul Hoque Vs. The State—Whether Additional District Magistrate is not included within the term 'District Magistrate' as contended by the petitioners' Advocate. Ministry of Establishment's Notification bearing No. MF/JA 111/VEST84—377 dated Dhaka 17.10.84 vested all powers of

District Magistrate in Additional District Magistrate. The Additional District Magistrate, Mymensingh had the jurisdiction within six months of the release of the accused.

37 DLR 107—Md. Taheruddin Vs. Abul Kashem Section—249 Cr. P. C empowers certain Magistrates to stop the proceedings of a case instituted otherwise than upon complaint at any stage without pronouncing any judgment either of acquittal or conviction, and thereupon to release the accused, but the Sessions Court has no such corresponding power (Ref : 4 BCR 251, 35 Cr. LJ 564).

9 BLC 414—Mosharraf Hossain Sheikh Vs. Abdul Kader and ors—Sections 249 & 403—An order of stay under this section does not mean the postponment of the proceeding sine-die and, in that view of the matter, the learned Magistrate has committed fundamental error in not reviving the proceeding. The learned Sessions Judge has committed similar error in failing to appreciate the scope adn application of section 249 Cr.P.C.

FRIVOLOUS ACCUSATIONS IN CASES TRIED BY MAGISTRATES

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

(2) the Magistrate shall record and consider any cause which such complainant or informant may show and if he is

satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one thousand Taka or, if the Magistrate is a Magistrate of the third class, not exceeding five hundred Taka, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

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

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

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

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

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

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

not be paid before the expiration of one month from the date of the order.

(5) Notwithstanding anything contained in this section, the Magistrate may, in addition to the order directing payment of the compensation under sub-section (2), further order that the person ordered to pay such compensation shall also suffer imprisonment for a period not exceeding six months or pay a fine not exceeding three thousand taka.

Scope and application—An order under section 250 can be made, only when the Magistrate's order acquitting the accused shows on the face of it that he entirely disbelieved the prosecution case, and that in his opinion, the prosecution was clearly false and vexatious or frivolous. The court must be satisfied that the case is wilfully false and that the complaint has been brought not bonafide for furthering the ends of justice but for some ulterior object such as to harass the accused or to bring pressure on them to achieve some other purpose.

40 DLR 441—Karim Dad Vs. Abul Hossain—It seems to me that section 250 of the Code of Criminal Procedure empowers only a Magistrate to invoke the said provisions while trying a case by him he finds that the accusations are false and either frivolous or vexatious and the same does not empower an Assistant Sessions Judge. The Assistant Sessions Judge acted beyond jurisdiction in making the impugned order under section 250 Cr. P. C as the offence under section 382 Penal Code triable by Court of Sessions, and not by a Magistrate (Ref: 9 BLD 210, 8 BCR 166, 21 DLR 304 (WP)).

18 DLR 206—Haidar Hussain Molla Vs. Akmal Khan—Mere acquittal is no ground for a proceeding under section 250, that might happen on various reasons. Unless the materials of the case would definitely indicate that the prosecution was started out of spite and malice, proceeding under section 250 can never be taken.

14 DLR 562—Abdul Quddus Vs. Hiran Bala—This section does not warrant order to pay compensation against a person who only instigates the giving false information but does not himself make the complaint or give the information to the police.

14 DLR 188 (SC)—Golam Kader Vs. Fazal Din—Complaint lodged under section 107 of the Code even if false and frivolous does not justify initiation of proceeding under section 250.

7 DLR 270—Ali Hossain Vs. Akkas Ali—The term of thirty day's imprisonment in default of payment of fine under section 250 can be imposed in respect of each of several accused in whose favour payment of compensation has been ordered though the aggregate term of imprisonment exceeds thirty days. It is true that in a proceeding under section 250, it is not necessary that the actual words used by the complainant in his complaint should be recorded separately as in the case of an accused under section 342 but there is hardly any doubt that the Magistrate should at least indicate in his judgment that he asked the requisite questions and he should set out the explanation the complainant gave and say whether he thought the explanation satisfactory, and if so, why compensation may be awarded after examination of all the witnesses (Ref : 6 BLD 7 (AD)).

5 DLR 169—Abdul Jalil Vs. A. Sabur—It is undesirable to pass an order under section 250 without considering the entire evidence which the complainant has adduced. From the mere fact that some of the witnesses made discrepant statement, it is not safe for the Magistrate to say that he is satisfied that the accusation was flase and still less to say that it is vexatious, ignoring completely other important evidence on record.

Revision—The Sessions Judge has power under section 435 and 439A Cr. P. C to examine an order under section 250 Cr. P. C in the exercise of its revisional jurisdiction.

Appeal—An appeal lies to the Sessions Judge under section 250 (3) Cr. P. C. An appellate court can go into all the facts of the case, in order to determine whether the case is false and vexatious (33 Cr. LJ 299).

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