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FOREWORD

More has been said about the writing of lawyers and judges than of any other group, except, of course, poets and novelists. The difference is that while the latter has usually been admired for their writing, the public has almost always damned lawyers and judges for theirs. If this state of affairs has changed in recent times, it is only in that many lawyers and judges have now joined the rest of the world is complaining about the quality of legal prose.

My best wishes to all these student contributors, for their future endeavors. My best wishes and assurance to the readers that this will add a lot to the knowledge after reading this Judiciary notes. It's not just for the legal fraternity but for anyone who has an interest in the field of law.

- By Vrinda Khanna, Associate,

All India Legal Forum

ALL INDIA LEGAL FORUM
WHERE LAW MEETS QUALITY

PREFACE

May there be Peace in Heaven, May there be Peace in the Sky, May there be Peace in the Earth, May there be Peace in the Water, May there be Peace in the Plants, May there be Peace in the Trees, May there be Peace in the Gods in the various Worlds, May there be Peace in all the human beings, May there be Peace in All.

PEACE, PEACE, PEACE.

Our age-old culture prays for peace and happiness for one and all. Family is the first and oldest social group. It has played an important role in the stability and prosperity of the civilization. Almost everything of lasting value in humanity has its roots in the family. Peace and harmony in the family are important for the all-round development of children. This Compilation of Judiciary notes by All India Legal Forum is aimed at bringing about desired sensitivity in all duty holders. We're glad to be a part of the All India Forum. Here's an introduction to my team:

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DISCLAIMER

Team AILF India has made all efforts to summarize the Judiciary notes retrieved from AIR and SCC. In some cases, the team has tried to summarize cases from the available sources as they could not find original ones.

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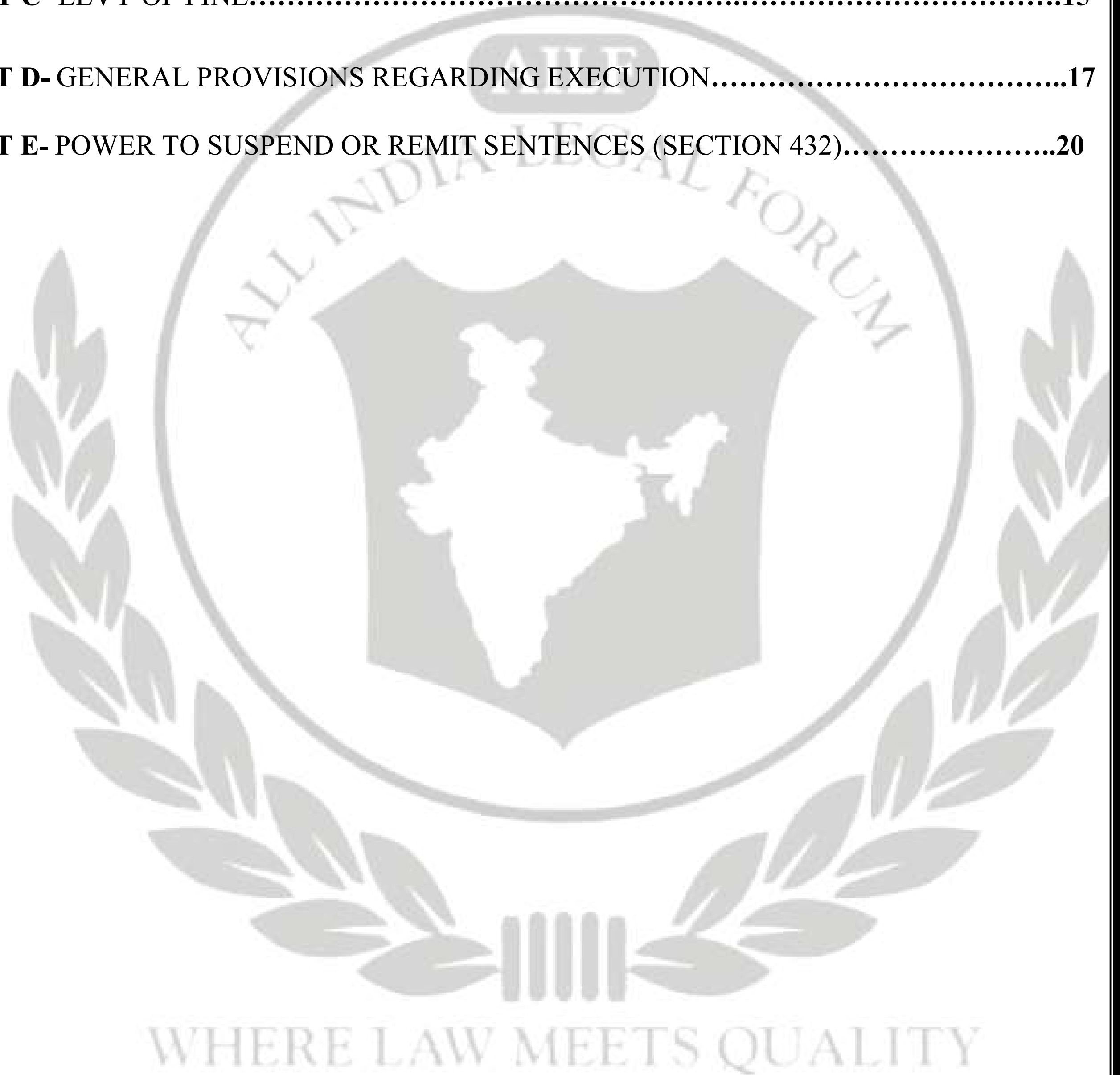
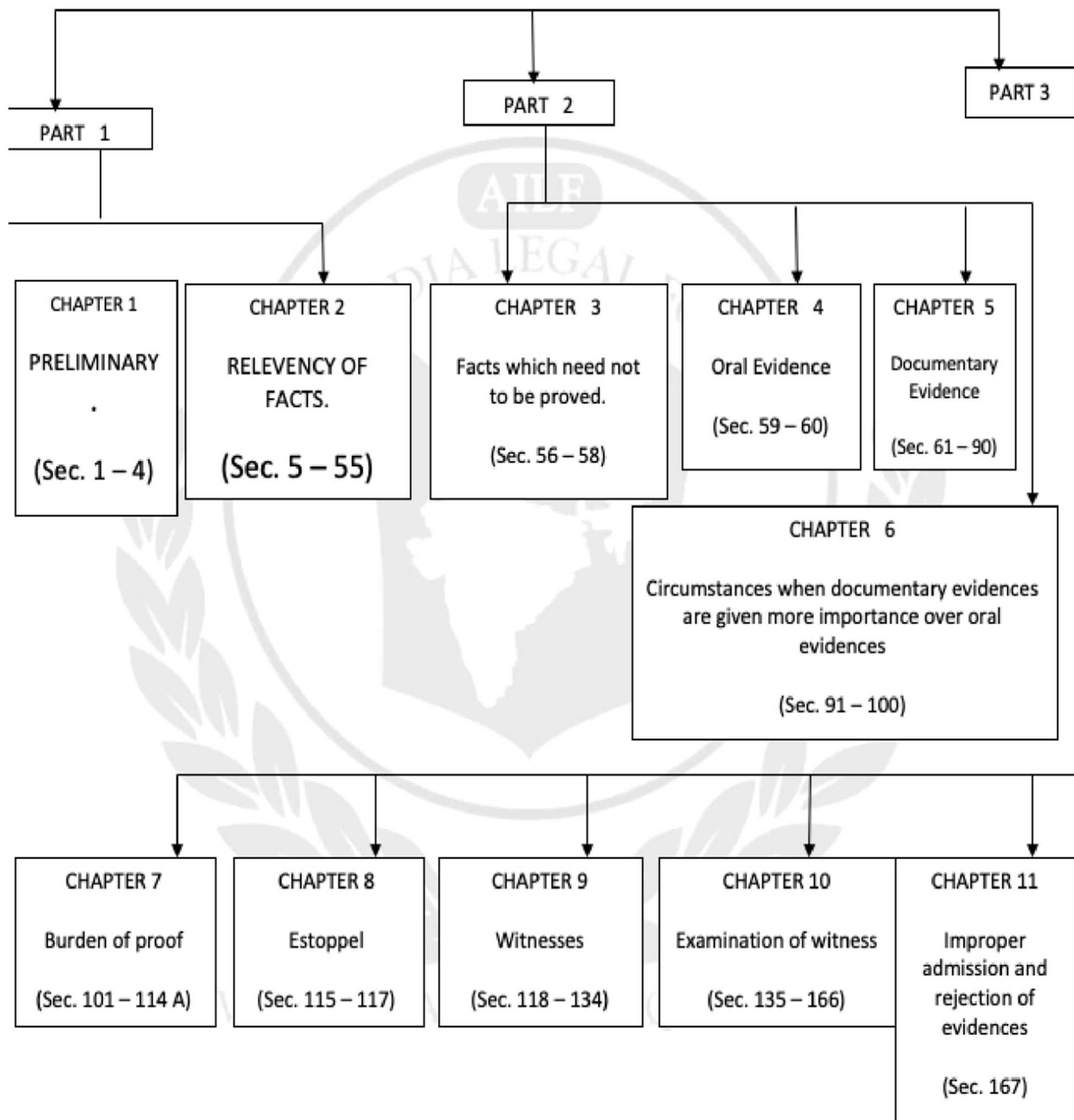


Indian evidences act, 1872



WHERE LAW MEETS QUALITY

DEFINITIONS :

"Court" -- "Court" includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.

"Document"

facts.

"Facts in issue"--The expression facts in issue means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

EXPLAINATION-

Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Example;

A is accused of the murder of B.

At his trial the following facts may be in issue:

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B,etc.

-- "Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. **"Evidence"**-- "Evidence" means and includes--

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(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

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(2) [all documents including electronic records produced for the inspection of the Court;] such documents are called documentary evidence.

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"Proved"-- A fact is said to be proved when, after considering the matters before it, the Court; either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved" -- A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved" -- A fact is said not to be proved when it is neither proved nor disproved.

SECTION 4. May Presume. Shall presume.Conclusive proof

"May presume" -- Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"Shall presume" -- Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"Conclusive proof" -- When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disprove

SECTION 5. Evidence may be given of facts in issue and relevant facts

*Evidence may be given in any suit or proceeding of the existence or non-existence of every **fact in issue** and of such other facts as are hereinafter declared to be **relevant,** and of no others.*

WHERE LAW MEETS QUALITY

Illustration:

A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A’s trial the following facts are in issue: -

1. A’s beating B with the club;

2. A's causing B's by death such beating;

3. A’s intention to cause B’s death.

MEANING:

This section illustrates that relevant facts are only to be given as evidence.

The concerned facts in issue are to be only dealt with, during the proceedings of the court and the rest are not relevant to the court. If a suitor were to bring any new unrelated issue, it would neither be accepted nor be heard in the later stage.

SECTION 6 : Relevancy of facts forming part of same transaction

*Facts which, though not in issue, are so connected with a fact in issue as to form **part of the same transaction**, are relevant, whether they occurred at the same time and place or at different times and places.*

Illustration:

A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly or after it as to form part of the transaction, is relevant fact.**RES GESTAE**: The basic principle of law which is found in section 6 is the doctrine of found in section 6 is the doctrine of Res Gestae. Facts which may be proved, as part of res gestae, must be facts other than those in issue but must be connected with it. Though hearsay evidence is not admissible, but when it is res gestae it can be admissible in a court of law and may be reliable evidence. The rationale behind this is the spontaneity and immediacy of such statement that there is hardly any time for concoction. So, such statement must be contemporaneous with the acts which constitute the offence or at least immediately thereafter. (Evidence which a person has heard and not seen is hearsay evidence)

Res gestae includes facts which form part of same transaction. If any fact fails to link itself with the main transaction, it fails to be a res gestae and hence inadmissible.

In **Uttam Singh vs. State of Madhya Pradesh**, the child witness was sleeping with the deceased father at the relevant time of incident and was awakened by the sound of the fatal blow of the axe on the neck of the deceased. Seeing it, the child shouted to his mother for help by naming the accused as assailant. On hearing the sounds the mother and sisters of the child

and other witnesses gathered at the spot. This evidence was held to be admissible as a part of the same transaction as such shout was the natural and probable as per the facts of the case. In this case if child witness failed to react on the spot but spoke later, it could still be admissible under sec 6.

SECTION 7. *Facts which are the occasion, cause, or effect, immediately or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.*

Illustrations:

(a) The question is, whether A robbed B. (CAUSE)

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is whether A murdered B. (EFFECT)

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is whether A Poisoned B. (OPPORTUNITY)

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

In **R v Dunellen (1955 1 QB 388),** the accused knew that the deceased take a certain medicine which is administered by his mother, at certain intervals. The accused used this as an opportunity and replaced the bottle of medicine with that of poison.

In **R v Richardson (Wills pp 225-29)**, the deceased girl was alone in her cottage and it was considered to be an occasion for murder.

SECTION 8. Motive preparation and previous or subsequent conduct.

Any fact is relevant which shows or ***constitutes a motive or preparation*** *for any fact in issue or relevant fact.*

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant,

if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Illustrations:

1) ***A is tried for the murder of B.***

The facts that A murdered C, that B knew that A had murdered C, and B had tried to had extort money from A by threatening to make his knowledge public, are relevant.

2) A is tried for the murder of B by poison. (PREPARATION)
The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

Considering the leading case of **Queen-Empress v Abdullah (1885 7 All 385 FB)**, the facts of which are: Abdullah had murdered a prostitute, aged between 15 and 20 years. He had slit her throat with a razor but the girl helped identify him by her conduct which was her hand gestures agreeing to questions asked. The defendant pleaded that this amounted to a statement but the learned judge held it to be subsequent conduct and prosecuted Abdullah for her murder.

SECTION 9. Facts necessary to explain or introduce relevant facts.

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

MEANING:

Facts which help in supporting, rebutting, explaining or introducing relevant facts are also relevant under this chapter, for example, if a person is absconding soon after being accused of a crime, it is relevant as conduct subsequent and affected by facts in issue.

In Sainudeen v State of Kerala (1992 Cr LJ 1644 Kerala) identification of the accused through his voice was relevant under this section.

Illustration:

A is accused of a crime The fact that, soon after the commission of the crime, A absconded from hi house, is relevant, under section 8 as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went is relevant, as tending to explain the fact that he left homesuddenly. The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

EXECUTION, SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES

EXECUTION OF SENTENCES

It means the enforcement or implementation of a judgment or order or direction passed by the court of judicature. The process of execution of the sentence depends on the nature and type of the sentence pronounced by the Judge or the Magistrate.

SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES

Suspension means to postpone the sentences without changing its duration.

Remission is the basic term owes to the reduction of the duration of the term of the sentence of judgment.

Commutation, in specific means, replacement or change of a legal penalty or punishment to a comparatively lesser period than the former sentence. These powers are the prerogatives of any sovereign power do not depend on the nature of the sentence pronounced.

It was believed and followed that the Judicial System shall function with due care, appropriateness and diligence. The Judges while rendering a judgment will try to choose the most appropriate punishment (with discretion of the Court specified therein), or render the same specified in law (without discretion of the Court), in case of a Criminal Case. But in some instance the judgment delivered may seem to be wrong or with more gravity than of the offence. In such cases, in order to maintain social justice and human rights into consideration, the judicial and executive authorities are given powers as specified in law to change the sentences

or judgments accordingly. In the process of execution, the judicial authorities are only involved. In cases of suspension, remission and commutation of sentences the Appropriate Governments are made as authorities and empowered with such powers as may be specified.

PART – B

IMPRISONMENT

POWER TO APPOINT PLACE OF IMPRISONMENT (SECTION 417)

- The State Government may direct an order of confinement upon any person at the place he is liable to be imprisoned or committed to custody under this Code.
- The State Governments power upon this provision is limited with the exceptions provided under this Code or any other law (Sub – section (1)).
- If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, by the order of the Court or Magistrate the imprisonment or committal may be directed to remove that person to a criminal jail (sub – section (2)).
- When a person is removed to a criminal jail under sub-section (2), he shall, on being released therefrom, be sent back to the civil jail, unless either of three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been released from the civil jail under Section 58 of the Code of Civil Procedure, 1908, or Section 2,3 of the Provincial Insolvency Act, 1920. The Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be released under Section 58 of the Code of Civil Procedure, 1908, or under Section 23 of the Provincial Insolvency Act, 1920.

EXECUTION OF SENTENCE OF IMPRISONMENT (SECTION 418)

- The provision gives directions for the person who is convicted and sentenced to imprisonment either for a term or for life under section 413.
- In such a case, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with

the warrant: Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail, and the accused may be confined in such place as the Court may direct (Sub – section (1)).

- In **Bhanja Naik v. Somnath**[1] the sentence of imprisonment would commence from the time it is passed.
- If the accused is not present in Court when the sentence id delivered, a warrant may be issued for his arrest and forward him to the jail or other place in which he is to be confined (Sub – section (2)).
- In the case of Sub – section (2), the sentence of imprisonment shall commence on the date of his arrest.

PROVISIONS REGARDING DEFINITION, ISSUES, DIRECTION, LODGING AND RETURN OF WARRANT.

- **DEFINITION**: A warrant is an order that serves as a specific type of authorization may be in a format of writ issued by a competent officer, usually a Judge or a Magistrate.
- **WARRANT CASE (SECTION 2(X)):** A warrant case means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.
- **ISSUE OF WARRANT (Section 425):** Every warrant for the execution of a sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor – in – office.
- **DIRECTION OF WARRANT FOR EXECUTION (Section 419)**: Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or to be confined.

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[1] 1969 Cri LJ 1414, 1416: AIR 1969 Ori.

- **WARRANT WITH WHOM TO BE LODGED (SECTION 420):** When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor. ❖
- **RETURN OF WARRANT ON EXECUTION OF SENTENCE (SECTION 430):**

When a sentence has been fully executed, the officer executing it shall return the warrant to the court from which it is issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

- **EFFECT OF WARRANT (Section 422):** A warrant issued under section 421(1)(a) by any Court may be executed within the local jurisdiction of such Court, and it shall authorize the attachment and sale of any such property outside such jurisdiction, when it is endorsed by the District Magistrate within whose local jurisdiction such property is found.

PART – C

LEVY OF FINE

WARRANT FOR LEVY OF FINE (SECTION 421)

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

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

(b) issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter: Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall Issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

In **Ali Khan v. Hajrambi[2],** it was held that, the proceedings for the recovery of fine under Section 421, the attachment of future salary of the offender is not permissible.

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[2] **1981 Cri Lj 682, 683.**

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1} are to be executed, and for the summary determination of any

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

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law: Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

Where a warrant for the recovery of the fine was issued before the whole term of imprisonment in default of payment of the fine was served, it is not necessary to record special reasons as the proviso is not applicable in such a case, specified in **Nilkantha Pal v.**
Bisakha Pal[3]**.**

WARRANT FOR LEVY OF FINE ISSUED BY A COURT IN ANY TERRITORY TO WHICH THIS CODE DOES NOT EXTEND (SECTION 423)

Notwithstanding anything contained in this Code or any other law for the time being in force, when an offender has been sentenced to pay a fine by a Criminal Court in any territory to which this Code does not extend and the Court passing the sentence issues a warrant to the Collector of District in the territory to which this Code extends, authorizing him to realize the amount as if it were an arrear of land revenue, such warrant shall be deemed to be a warrant issued under section 421(1)(b) by a Court in the territories to which this Code extends, and the provisions of sub – section (3) of the said section as to the execution of such warrant shall apply accordingly.

SUSPENSION OF EXECUTION OF SENTENCE OF IMPRISONMENT (SECTION 424)

(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may,

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable

[3] **1936 Cri Lj 1267, 1268: AIR 1935 Cal 546.**

on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days;

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be, is not realized on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

In **Alt Hussain v. Emperor**[1]**,** it was interpreted that, this section applies if the court has imposed a sentence of fine only and has awarded a term of imprisonment in default of payment of fine; it does not apply where a substantive sentence of imprisonment has been awarded and also a fine and a term of imprisonment in default have been awarded by the court.

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

The rules should provide for the procedure to be followed when such claims are made.

PART – D

GENERAL PROVISIONS REGARDING EXECUTION

SENTENCE ON ESCAPED CONVICT WHEN TO TAKE EFFECT (SECTION 426)

- When a sentence of death, imprisonment for life or fine is passed under this Code on an escaped convict, such sentence shall, take effect immediately (Sub – section (1)).

[1] **(1933} 34 Cri LJ 530, 532: AIR 1933 Cal 308.**

- When a sentence of imprisonment for a term is passed under this Code on an escaped convict,

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  - if such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately, or
  - if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence (Sub – section (2)).
- For the purposes of sub-section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment (Sub – section (3)).

SENTENCE ON OFFENDER ALREADY SENTENCED FOR ANOTHER OFFENCE (SECTION 427

- This provision deals with concurrent conviction with imprisonment.
- An accused person shall be in imprisonment for an offence for a particular period.
- In such a case, the subsequent conviction to imprisonment for a term or imprisonment for life shall commence at the expiration of the previously sentenced imprisonment (Sub – section (1)).

Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

- If the Court makes by an order for such person, the former and the latter sentences of imprisonment shall run concurrently (Sub – section (2)).

In **Miiiaim Singh v. State[5],** the following was observed. It would be proper exercise of the discretion to make the sentence on a subsequent conviction to run concurrently with the

previous sentence where separate trials are held for offences which, while constituting distinct offences, are inherently or intimately connected with each other.

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1974 Cri l.j 1597, :140c (All) (LB).

The following has been observed in **Mulaim Singh v. State[6].** There is no clear restriction in the Code itself that a direction for making the sentences to run concurrently cannot be given in exercise of inherent powers, and it would be competent for the High Court to give such a direction in exercise of its inherent power under Section 482 where it would serve any of the three purposes mentioned in that section, i.e to give effect to any order under the Code, or to prevent the abuse of the process of the court, or otherwise to secure the ends of justice.

PERIOD OF DETENTION UNDERGONE BY THE ACCUSED TO BE SET-OFF AGAINST THI SENTENCE OF IMPRISONMENT (SECTION 428)

- The accused person should be detained for a period of time, if any, during the investigation, inquiry or trial of the same case.
- In such a case, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, before the date of such conviction, shall be set-off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

It has been observed in **joint Committee Report, p. xxix** "that in many cases accused persons are kept in prison for very long period as undertrial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in jail as undertrial prisoner. Indeed, there may be cases where such a person is acquitted ... in many cases the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided".

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MONEY ORDERED TO BE PAID RECOVERABLE AS A FINE (SECTION 431)

Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine. The Supreme Court overturned the ruling in **Kartar Singh v. State[2] of Haryana** observing, "To say that a sentence of life imprisonment imposed upon an accused is a sentence for the term of his life does offence neither to grammar nor to the common understanding of the word, 'term'.

PART – E

POWER TO SUSPEND OR REMIT SENTENCES (SECTION 432).

(1) When any person has been sentenced to punishment for an offence. Power to suspend or the appropriate Government may, at any time, without conditions or upon remit sentences any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.
(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion, a certified copy of the record of the trial or of such record thereof as exists.

[2] **(1982) 3 SCC 1: 1982 SCC (Cri) 522, 329: 1982 Cri LJ 1772.**

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

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

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

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

(7) In this section and in Section 433, the expression "appropriate Government" means,

(a) in cases where the sentence is for an offence against, or the order referred to in subsection (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government.

POWER TO COMMUTE SENTENCE (SECTION 433)

The appropriate Government (Central / State) may, commute the sentences of conviction allied with imprisonment of any person without the consent of such person. Such sentences are:

- A sentence of death, for any other punishment provided by the IPC.
- A sentence of imprisonment for life, for imprisonment of a term not exceeding fourteen years or for fine.
- A sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced or for fine.
- A sentence of simple imprisonment for fine.

CONCURRENT POWER OF CENTRAL GOVERNMENT IN CASE OF DEATH SENTENCES (SECTION 434).

The powers conferred by sections 432 and 433 upon the state government may, in the case of sentences of death, also be exercised by the Central Government.

STATE GOVERNMENT TO ACT AFTER CONSULTATION WITH CENTRAL GOVERNMENT IN CERTAIN CASES (SECTION 435).

- In case of suspension, remission or commutation of sentences, the Central and State Government shall exercise concurrent powers over it. But, for the sentences issued under sections 432 and 433 for such specified offences, the State Government shall not solely exercise this power except after consultation with the Central Government. They are follows, (Sub – section (1)), o For any offence which was investigated by the Delhi Special Police constituted under the Delhi Special Police Establishment Act, 1946.
  - For any offence which was investigated by any agency empowered by the Central Government under any Central Act other than this Code.
  - For any offence involving misappropriation of or destruction of or damage to any property belonging to the Central Government.
  - For any offence committed by a person in the service of the Central Government, while acting or purporting to act in the discharge of his official duty.
  - For any offence committed by any person who has been convicted of which such matters involve the executive power of the Union.
  - For any conviction which involves separate terms of imprisonment which are to run concurrently of any person (Sub – section (2)).

TRIAL BEFORE A COURT OF SESSION:

A trial is the initiating process carried out in Courts or in any competent authority with the obligation of hearing and settling disputes. The parties present their side of documents and other proofs as record of evidence, thereby, also standing with each of their arguments. It is a formal examination of a case happening in an open Court. The Court of Session is explained under section 9 of the Criminal Procedure Code, 1973. In general, it is the Court to examine

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about the criminal cases at the district level in a state. The State Government shall establish a Sessions Court for every Sessions division, presided over by a Judge appointed by the High Court. The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session. The Court of Session shall hold its sitting at such places or places as the High Court may, by notification, specify. Under the Criminal Procedure Code, 1973, chapter XVIII details about the enacted procedures that has to be followed accordingly by the Courts in disposing a case.

- ✓ The Central Government or the State Government may appoint, for the purposes of any case or class of cases, an advocate who has been in practice for not less than ten years, as a Special Public Prosecutor.

INITIATION OF TRIAL (section 226)

- The provision explains about the trial proceedings to be initiated and conducted by the public prosecutor appointed by the appropriate government.
- In every trial before a Court of Session the prosecution shall be conducted by a public prosecutor.

OPENING CASE FOR PROSECUTION (SECTION 226 R.W.S. 209)

- In a type of 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 by the Court of Session, the concerned Magistrate u/s. 207 or 208, may refer the case to the Court of Session.

- The public prosecutor would be notified of the commitment of the case to the Court of Sessions. The accused either voluntarily appears or is brought before the Court for commitment of a case u/s. 209.

- As specified in s. 225, the public prosecutor shall open the prosecution in favour of the public authority, his arguments by describing the charge brought against the accused.
- The public prosecutor states and submits to the Court, the evidences through which he was proposed to prove the guilt of the accused.

The public prosecutor briefs the summary of the case. The Court mandatorily should secure presence of the accused person, but at the same time the Court cannot acquit the accused if not present.

PATH OF THE CASE

DISCHARGE (SECTION 227)

- The judge hears the submissions and arguments from both the parties i.e., from the public prosecutor and the accused person. The judge considers the record of the case, document submitted for record of evidence.
- If the judge considers that there is no sufficient grounds for presumption of the guilt charged over the accused person for proceeding the case, he shall discharge the accused person and record his reasons for doing so. This is a beneficent provision to save the accused from prolonged harassment which is a necessary concomitant of a protracted trial.

Thereby, the case gets winded up and the judge exercises the power of discretionary jurisdiction of the Court i.e., the Judges in performing their official duty. The reasons for discharging must be recorded so as this helps for the superior Court, at times of any conflict, to verify the Judgements for such acquittal.

JUSTIFICATION GUARANTEED BY SUPREME COURT FOR DISCHARGE

According to the Supreme Court,26 the following four principles are applicable in regard to the exercise of the power of discharging the accused under Section 227:

- That the judge while considering the question of framing the charges has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

- Where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
- The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
- That in exercising his jurisdiction under Section 227 the judge who under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on.
- This, however, does not mean that the judge should make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

CHARGE (Section 211)

The charge states the offence with which the accused is charged. It shall be written in the language of the Court.

FRAMING OF CHARGES (Section 228)

The judge takes into consideration the record of the case, document submitted for record of evidence. If the judge after hearing, considers that there is sufficient ground for presumption that the accused may or may not have committed offence, (1),

(a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other judicial Magistrate of the First Class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the First Class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report.

(b) is exclusively triable by the court, he shall frame in writing a charge against the accused.

- It has been held in **Rukmini Narvekar v. Vijaya Satardekar**[3], that ordinarily, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as indicated in Section 227 CrPC can be taken into consideration by the court at the time of framing the charge.

Explanation of the charge (Section 228(2)) ✓ Where the offence is exclusively triable by the Court of Session and a charge has been framed in writing against the accused as mentioned above in Section 128(1), the charge shall be read and explained to the accused.

- The accused shall then be asked whether he pleads guilty of the offence or claims to be tried.

A sessions judge can transfer a case only to the Chief Judicial Magistrate. This ensures the power of discretion to the sessions judge to transfer a case either to the Chief Judicial Magistrate or to any other Judicial Magistrate of 1st class or to any other. The Sessions Judge itself shall fix a date for the appearance of the accused before the Chief Judicial Magistrate or the Judicial Magistrate, as the case may be so that a lot of time which is wasted in summoning the accused by the Magistrate may be saved.

CONVIICTION ON PLEA OF GUILTY (Section 229)

- If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.
- In **Pawan Kumar v. State of Haryana**[10], it has been clarified by the Supreme Court that if an accused who has not been confronted with the substance of allegations against

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[3] **(2008) 14 SCC 1; State of orissa v. debendra nath, (2005) 1 SCC 568** [10] **(1996) 4 SCC 17: 1996 SCC (Cri)**

him, pleads guilty to the violation of a provision of law, that plea is not a valid plea at all.

- The need for observing safeguards before pleading guilty was stressed by the Bombay High Court in **Anand Vitboba Lohkare v. State of Maharashtra**[11].
- If conviction for an accused is based on the plea of guilty, such persons right to appeal is curbed by the section 375.

EVIDENCE

DATE FOR PROSECUTION EVIDENCE (Section 230)

If the accused refuses to plead or does not plead, or claims to be tried or is not convicted under Section 229, the judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

EXAMINATION OF WITNESSES

The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court (section 135 of Indian Evidence Act, 1872). The examination of witnesses may take place in three stages.

- EXAMINATION – IN – CHIEF: the examination of a witness by the party who calls him shall be called his examination – in – chief.
- CROSS – EXAMINATION: the examination of a witness by the adverse party shall be called his cross – examination.
- RE – EXAMINATION: the examination of a witness, subsequent to the cross – examination by the party who called him, shall be called his re – examination.

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PROCEDURES FOR COMMENCING PROSECUTION

EXAMINATION (Section 231) ✓ On the date so fixed the judge shall proceed to take all such evidence as may be produced in support of the prosecution.

- The judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.
- It is no doubt the duty of the prosecution to examine all material witnesses essential to the unfolding of the narrative on which the prosecution is based, whether in the result the effect of that testimony is for or against the case for the prosecution[4].

RECORD OF EVIDENCE (Section 276)

- The judge who presides over the Court of Session in all trials makes in writing or dictation in open Court by an officer of the Court under his supervision, all evidences of witnesses for further reference.

- If, after taking the evidence for the prosecution, examining the accuse and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.
- This procedure can be understood as the sessions of the Court of Sessions trial. This helps the concerned acquitted person to be relieved from further unnecessary procedures which the authorities may compel him to produce where there is no solid proof.

- In **Prem v. State of Haryana**[13], the Court observed that, if the judge does not think it proper to acquit him under Section 232, he has to call on the accused to enter on his defence and it is that stage at which the accused person is under duty to apply for the issue of process for summoning the defence witnesses.

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[4] **Habaeb Mohammad v. State of Hyderabad, 1954 Cri Lj 338**

ENTERING UPON DEFENCE (Section 233)

EXAMINATION

Where the accused is not acquitted under Section 232 as mentioned above, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

WRITTEN STATEMENT OF ACCUSED (Section 233(2))

- The accused person, if he desires, can put in any written statement in his defence. ✓ If he puts in any such statement, the judge shall file it with the record.
- If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the judge shall issue such process unless he considers, for reasons to be recorded, that any such application should be refused on the ground that it is made for the purpose of vexation or for delaying the ends of justice.

ARGUMENTS (Section 234) ✓ When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply.

- Provided that where any point of law is raised by the accused or his pleader, the prosecution may with the permission of the judge, make his submission with regard to such point of law.

JUDGEMENT OF ACQUITTAL OR CONVICTION (Section 235)

After hearing arguments and points of law (if any), the judge shall give a judgment in the case. In CrPC, under chapter XXVII, sections 353 to 365, deals with the elaborate provisions for the procedures for rendering judgement.

WHERE LAW MEETS QUALITY

PROCEDURE FOR ORDER OF CONVICTION

- If the accused is convicted, the judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

- In **Muniappan v. State of T.N** [5] , the Supreme Court has further held that the obligation to hear the accused on the question of sentence is not discharged by putting a formal question to him as to what he has to say on the question of sentence.
- The court must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence.
- It is the bounden duty of the court to cast aside the formalities of the court scene and approach the question of sentence from broad sociological point of view.
- Therefore, the questions which the judge can put to the accused under Section 235(2) and the answers which the accused makes to those questions are beyond the narrow constraints of the Evidence Act.
- In **Dagdu v. State of Maharastra**[6], even in other cases remand may not always be necessary, and the higher court may itself hear the accused on the question of sentence and may give necessary facilities to the accused for this purpose.

PREVIOUS CONVICTION (Section 236)

In a case where a previous conviction is charged under the provisions of Section 211(7) and the accused does not admit that he has been previously convicted as alleged in the charge, the judge may, after he has convicted the said accused under Section 229 or 235, take evidence in respect of the alleged previous conviction and shall record a finding thereon.

PROCEDURE IN CASES INSTITUTED UNDER SECTION 199(2) (Section 237)

- A Court of Session taking cognizance of an offence under sub-section (2) of Section 199 shall try the case in accordance with the procedure for the trial of warrant cases instituted otherwise than on a police report before a Court of Magistrate.
- Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution. Every trial under this section shall be held in camera if either party thereto so desires or if the Court thinks fit so to do.
- If, in any such case, the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the accusation against them or

[5] **(1981) 3 SCC 11: 1981 SCC (Cri) 617**

[6] **(1977) 3 SCC 68: 1977 SCC (Cri) 421, 442**

any of them, it may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, VicePresident or the Governor of a State or the Administrator of a Union territory) 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.

- The Court shall record and consider any cause which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the accusation, it may, for reasons to be recorded, make an order that compensation to such amount not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.
- Compensation awarded under sub-section (4) shall be recovered as if it were a fine imposed by a Magistrate. No person who has been directed to pay compensation under sub-section (4) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this section.
- 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.
- The person who has been ordered under sub-section (4) to pay compensation may appeal from the order, insofar as it relates to the payment of compensation, to the High Court.
- When an order for payment of compensation to an accused person is made, 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.

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