TRIAL PROCEDURE IN CRIMINAL LAW

NAME – SAMRUDDHI LAAD

CLASS – S.Y.LLM

SEMESTER – III

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CHAPTER I

HISTORY[1]

In medieval India, subsequent to the conquest by the Muslims, the Mohammedan Criminal Law came into prevalence. The British rulers passed the Regulating Act of 1773 under which a Supreme Court was established in Calcutta and later on at Madras and in Bombay. The Supreme Court was to apply British procedural law while deciding the cases of the Crown's subjects.

After the Rebellion of 1857, the crown took over the administration in India. The Criminal Procedure Code, 1861 was passed by the British parliament. The 1861 code continued after independence and was amended in 1969. It was finally replaced in 1972.

The **Code of Criminal Procedure** is the main legislation on procedure for administration of substantive criminal law in India. It was enacted in 1973 and came into force on 1 April 1974. It provides the machinery for the investigation of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused person and the determination of punishment of the guilty. Additionally, it also deals with public nuisance, prevention of offences and maintenance of wife, child and parents.

[1] Available at en.wikipedia.org/wiki/Code_of_Criminal_Procedure,_1973, visited on 15th November 2013

CHAPTER II

BRIEF DESCRIPTION OF CRIMINAL CASES IN INDIA

A brief description of the Criminal case in India[2]

Criminal case in India is governed by the Code of Criminal Procedure, 1973 which describes the process of conducting a criminal case in India. The stages of a criminal case in India can be described in the following steps:

1. Reporting of commission of an offence to the police. The persons informing the police is called either informant or complainant and the persons against whom complaint is made are called suspect or accused based on the facts of the case.

2. Police may register a FIR if the matter reported amounts to commission of a cognizable offence and start the investigation in the matter. The police may not register a FIR if the matter reported is a non-cognizable offence. This is named as a state case when the police register the FIR on the basis of the complaint. This may be termed as the beginning of the criminal case in India.

3. Complaint case: When the police refuse to register the FIR, the complainant has the remedy to file an application under Section 156(3) of CrPC before the court of the magistrate on which the magistrate can issue directions to the police to register a FIR and investigate the matter. If the magistrate declines to issue the directions to the police to register the FIR , the option still available with the complainant is to file a complaint under Section 200 of CrPC before the court of the Magistrate seeking summoning and punishment of the accused persons. This is called the complaint case

[2] An article *by Fylfot Group of Advocates in a Blog Tagged as criminal case in India dt. 25th August, 2013, available at* http://www.legalhelplineindia.com/criminal-case-in-india/, visited on 15th November 2013

as police has no role to play in the same. The court may after considering the evidence led by the complainant may issue summons against the accused persons.

4. If the offence reported is bailable , the police may admit the accused on bail subject to the terms and conditions imposed on him. If the offence reported is non-bailable then the police may either arrest the accused or may not arrest him if his custodial interrogation is not required.

5. The offences have been described in the Indian Penal Code, 1860 and various other special laws including the laws applicable in the respective states. Police is required to conduct the investigation in the matter after registration of the FIR and to collect the entire evidence related to the commission of the offence and role of the accused persons, witnesses, medical evidence etc. The police is required to file the charge sheet on the basis of the same before the competent court and the court may issue summons to the accused persons named in the charge sheet filed by the police.

6. Criminal case in India is assigned to the court of the magistrates depending upon the nature of the offence as classified in the First Schedule of the CrPC. In metropolitan cities, the magistrate is often named as Metropolitan Magistrate whereas in the other areas he is called the Judicial Magistrate.

7. After issuance of the summons to the accused persons by the court, the criminal trial formally begins and the accused persons are summoned to appear before the court on the date fixed by the court. This is another important stage in the criminal case in India.

8. The court then proceeds to frame charges on the accused persons on the basis of the contents of the FIR , the court has the powers to remove and add charges on the accused persons on the basis of the FIR.

9. The next stage of the criminal case in India is the evidence stage of the case when all the witnesses named by the police in its charge sheet are summoned before the court to give evidence and prove the case of the police, the accused are given the liberty to

cross examine the said witnesses to disprove the case of the prosecution. In this process the police is represented by the APP and the accused persons have the liberty to be represented by their defense counsels.

10. After the prosecution witness is over, the accused are given the chance to produce their defence witness thereafter the court proceeds to record the statement of the accused persons.

11. The matter is thereafter fixed for final arguments and on the basis of that the court comes to the conclusion whether the offence has been proved or not, the court passes the orders in the case accordingly.

12. If the guilt of the accused persons has been proved the court thereafter fixes the matter for sentence and awards the sentence to the accused persons based upon the facts of the case. This is the last stage of the case and the criminal trial is treated to be completed after this stage. The accused persons are either convicted or exonerated based on the findings of the trial and the aggrieved party has the liberty to file appeal against the orders passed in the matter. This is considered as the final stage of the criminal case in India.

CHAPTER III

PRE-TRIAL STAGE : REGISTERING F.I.R.

F.I.R. is the abbreviated form of First Information Report. It is the information recorded by the police officer on duty, given either by the aggrieved person or any other person about the commission of an alleged offence. On the basis of the F.I.R. the police commences its investigation.[3]

WHO CAN FILE AN F.I.R.

Any person can file an F.I.R. He need not be the aggrieved person. It may be merely hearsay and need not be by the person who has had firsthand knowledge of the facts.

WHERE TO FILE AN F.I.R.

An F.I.R. can be filed in the police station of the concerned area in whose jurisdiction the offence has occurred. It must be made to the officer-in-charge of the police station and if he is not available the Assistant Sub Inspector is competent to enter upon the investigation

HOW TO FILE AN F.I.R.

When a wrong has been committed and the aggrieved person or any other person wants to file a F.I.R. it shall be filed in the following manner.

1. Go to the police station and meet the officer-in-charge.
2. Step by step in an orderly sequence narrate to the officer every information relating to the commission of the offence.
3. The officer shall reduce the information given in writing.
4. The information given shall be signed by the person giving it.
5. The information given shall be entered in a book to be kept by the officer.[4]

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[3]Criminal Major Acts, Sarkar, Sixth Ed. 1998 - The Code of Criminal Procedure 1973, pg. 97

[4] Id. at pg 98

COPY OF THE INFORMATION AS RECORDED SHALL BE GIVEN FREE OF COST TO THE INFORMANT.[5]

WHERE AN OFFICER-IN-CHARGE REFUSES TO RECORD THE INFORMATION

If the officer in charge refuses to record the information, the information may be sent in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.[6]

INVESTIGATION

Once the F.I.R. has been registered the investigation in the case shall begin.

[5] Criminal Major Acts, Sarkar, Sixth Ed. 1998 - The Code of Criminal Procedure 1973, pg. 98

[6] Ibid

CHAPTER IV

COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATE

A) CHARGESHEET[7] :

When a Police officer gives a Police report under section 173 Cr.P.C. recommending prosecution, it is called a charge sheet. Every investigation under this Chapter shall be completed without unnecessary delay. As soon as it is completed, the officer in charge of the police station shall forward a copy to a Magistrate empowered to take cognizance of the offence on a police report.[8] After questioning the accused and hearing the arguments, the magistrate frames charges on the accused for which he is tried.

Here is a definition from a case **K.Veeraswami Vs Union Of India** [9]. The investigating officer collects material from all sides and prepares a report, which he files in the court as charge-sheet. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the Cr.P.C. The statutory requirement of the report under Section 173(2) would be complied with of the various details prescribed therein are included in the report.

This report is intimation to the magistrate that upon investigation into a cognizable offence the Investigation Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2), purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the

[7] The Code of Criminal Procedure 1973, Bare Act, (2 of 1974) as amended by The Code of Criminal Procedure (Amendment) Act 2008, (5 of 2009)
[8] Criminal Major Acts, Sarkar, Sixth Ed. 1998 - The Code of Criminal Procedure 1973, pg. 119
[9] (1991) 3 SCC 655)

Court. The report is complete if it is accompanied with all the documents and statements of witnesses required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence."

B) SECTION-200 OF CR.P.C. - EXAMINATION OF COMPLAINANT[10] :

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

When a private complaint is lodged certain formalities have to be gone into. **Section 200** provides that the Magistrate will examine the complainant on oath and at that stage, the Magistrate makes up his mind after reading the complaint and going through the statement of the complainant which is reduced into writing, whether he should issue

[10] The Code of Criminal Procedure 1973, Bare Act, (2 of 1974) as amended by The Code of Criminal Procedure (Amendment) Act 2008, (5 of 2009)

process or not. It is at this stage that the Magistrate has to consider whether examination of the complainant and the sworn statement of the complainant before him constitute sufficient material for proceeding with the case.

"There is nothing in the **Code** prohibiting a Magistrate after taking cognizance of an offence and examination by him of the complainant and the witnesses present, if any **under section 200** from straightway issuing process **under Section** 204. The question then is whether the proviso to **Section** 202(2) stands in the way of doing that. That proviso is one to S. 202(2). **Section** 202(2) is specific that what is contained therein is applicable only to the inquiry referred to in **Section**202(1)."[11]

C) SUPPLY OF COPIES TO THE ACCUSED[12]

i. The Magistrate should bear in mind that under Sections 207 and 208 of the Code of Criminal Procedure, 1973, the statutory duty is cast upon them to furnish to the accused, free of cost, copies of the documents specified in the said sections. Before the proceeding in the case, they should satisfy themselves the copies of all the documents specified in the said sections are furnished to the accused.

ii. In cases wherein the proceedings have been instituted on Police reports, such copies of the documents specified in sections 173(5) and 207 the code of the Criminal Procedure, 1973, should be furnished to the accused by the Police Officer, if it is convenient to him.

iii. In cases wherein the proceedings have been instituted otherwise than on Police reports, wherein the offence is triable exclusively by the Court of Session, the Magistrate shall furnish the accused, free of cost, copies of the documents specified in section 208 of the Code of Criminal Procedure,1973 if he is satisfied

[11] The Code of Criminal Procedure 1973, Bare Act, (2 of 1974) as amended by The Code of Criminal Procedure (Amendment) Act 2008, (5 of 2009)
[12] BCR's Criminal Manual Ed. 2012 pg. 144

that any such document is not voluminous. In case such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct the accused that he will only be allowed to inspect them personally or through pleader in the Court.

CHAPTER V

FRAMING OF CHARGES

If it's a summon case, a simple notice is given and a response is sought from the accused. But in warrant cases, the court frames the charges.

Framing of charges mean that the court looks into the evidence collected by the investigating agency and applies its mind so as to what are the charges under which an accused has to be booked. For example, the police has filed a chargesheet accusing a person of murder under section 302, but the court deems it proper to charge the person for culpable homicide not amounting to murder under section 304. At this stage, if an accused pleads guilty then the court will apply its judicial mind and decide the punishment accordingly. And if the accused pleads not guilty, he is informed the charges under which he would be required to face the trial.[13]

On the other hand, if the judge finds that no offence against an accused is made out, the accused is discharged from the case. The court has to apply its mind and record the reasons for discharging an accused.

One basic requirement of a fair trial in criminal jurisprudence is to give precise information to the accused as to the accusation against him. This is vitally important to the accused in the preparation of his defence. In all trials under the Criminal Procedure Code the accused is informed of the accusation in the beginning itself. In case of serious offences the Code requires that the accusations are to be formulated and reduced to writing with great precision & clarity. This "charge" is then to be read and explained to the accused person.[14] Charge serves the purpse of notice or intimation to the accused, drawn up according to specific

[13] India: Framing Of Charges: An Overview, an article by Sugandha Nayak, available at http://www.lexology.com/library/detail.aspx?g=458929f9-4489-499a-ad62-ee211189228d

[14] This procedure is followed in trials of warrant cases & trials before courts of session

language of law, giving clear and unambiguous or precise notice of the nature of accusation that the accused is called upon to meet in the course of trial.[15]

Relevant Legal Provisions of Criminal Procedure Code (CrPC)[16]

- Section 211 & Section 212 specifies about Contents of Charge and mentioning of particulars as to time and place of the alleged offence in the charge.

- Section 213 talks about; when manner of committing offence must be stated:

When the nature of the case is such that the particulars mentioned in sections 211 and 212 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 is which the alleged offence was committed as will be sufficient for that purpose.

- Section 214 gives a rule for interpreting the words used in the charge: It provides that 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.

Basic Procedure regarding charge & its trial

The initial requirement of a fair trial in criminal cases is a precise statement of the accusation. The code seeks to secure this requirement, first, by laying down in Sections 211 to 214 of CrPC as to what a charge should contain; next, stipulating in Section 218 of CrPC that for every distinct offence there should be a separate charge; and lastly, by laying down in the

[15]VC Shukla v. State through CBI 1980 Cri LJ 690, 732

[16] The Code of Criminal Procedure 1973, Bare Act, (2 of 1974) as amended by The Code of Criminal Procedure (Amendment) Act 2008, (5 of 2009)

same section that each charge should be tried separately, so that what is sought to be achieved by the first two rules is not nullified by a joinder of numerous & unconnected charges[17].

Amendment/Alteration of charge

According to Section 216 (1) of CrPC, any court may alter or add to any charge at any time before judgment is pronounced. The section invests a comprehensive power to remedy the defects in the framing or non-framing of a charge, whether discovered at the initial stage of the trial or at any subsequent stage prior to the judgment.

The code gives ample power to the courts to alter or amend a charge whether by the trial court or by the Appellate Court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it & putting forward any defence open to him, on the charge finally preferred against him. The court has a very wide power to alter the charge; however, the court is to act judiciously and to exercise the discretion wisely. It should not alter the charge to the prejudice of the accused person.[18]

Conclusion

In a criminal trial the charge is the foundation of the accusation & every care must be taken to see that it is not only properly framed but evidence is only tampered with respect to matters put in the charge & not the other matters.[19]

In framing a charge during a criminal trial, instituted upon a police report, the court is required to confine its attention to documents referred to under Section 173[20].

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[17] Sanatan Mondal v. State, 1988 Cri LJ 238 (Cal)

[18] Harihar Chakravorthy v. State of W.B., AIR 1954 SC 266

[19] Ramakrishna Redkar v. State of Maharashtra, 1980 Cri LJ 254 (Bom)

[20] State of J&K v. Sudershan Chakkar, (1995) 4 SCC 181

The judge needs to be only convinced that there is a prime facie case, where there is no necessity to adduce reasons for framing charges. However, the magistrate is required to write an order showing reasons if he decides to discharge the accused.

The sections dealing with charge do not mention who is to frame the charge. The provisions dealing with different types of trials however provide that it is always for the court to frame the charge. The court may alter/ add to any charge at any time before the judgment is pronounced.

But if a person has been charged, the court cannot drop it. He has either to be convicted or acquitted. All this has an important bearing on the administration of justice.[21]

[21] Omvati v. State (Delhi Admn.), (2001) 4 SCC 38

CHAPTER VI

TYPES OF TRIAL

A) *TRAIL BY COURT OF SESSIONS[22]:*

MEANING OF TRIAL

The term trial has not been defined by CrPC. It may be defined as under:

"A formal examination of evidence in a court of law in order to decide if a person is guilty of a crime."

PROCEDURE TO BE FOLLOWED BY COURT OF SESSION U/SEC 265-B

Following procedure shall be followed in a trial by the Court of Session.

I- SUPPLY OF STATEMENTS AND DOCUMENTS U/SEC 265-C

CASES INSTITUTED UPON POLICE REPORT

The following documents shall be supplied free of cost to the accused not later than 7 days before commencement of the trial;

a) FIR
b) POLICE REPORT
c) STATEMENTS OF WITNESSES RECORDED U/SEC 161 AND 164 CrPC
d) INSPECTION NOTES RECORDED BY IO
e) RECOVERY NOTES

CASES INSTITUTED UPON COMPLAINT

The following documents shall be supplied free of cost to the accused not later than 7 days before commencement of the trial;

a) COMPLAINT WHICH IS MADE
b) ANY DOCUMENT ATTACHED WITH THE COMPLAINT
c) STATEMENTS MADE UNDER SECTIONS 200 AND 202 OF CrPC

[22] Available at www.lawmcqs.blogspot.com, visited on 15th Nov 2013

II- FRAMING OF CHARGE U/SEC 265-D

III- PLEA U/SEC 265-C

IV- RECORDING OF EVIDENCE U/SEC 265-F

If the accused does not plead guilty or the Court does not convict him guilty in its discretion, the court shall proceed to hear the complainant and take all evidence produced by the prosecution.

i) Summoning Of Witnesses

ii) Accused to Be Asked To Adduce Evidence

iii) Evidence Adduced By the Accused

iv) Issuing Of Process

a) Compelling the attendance of any witness or
b) Production of any document or
c) Any other thing.

The court shall issue such person

V- SUMMING UP U/SEC 265-G

WHERE ACCUSED ADDUCE EVIDENCE

VI- JUDGMENT U/SEC 265-H

WHERE ACCUSED IS GUILTY

WHERE ACCUSED IS NOT GUILTY

VII- POWER OF COURT TO ACQUIT ACCUSED AT ANY STAGE U/SEC 265-K

B) TRIAL IN SUMMONS CASE AND WARRANT CASE[23]

As per **Section 2(w)**, "summons-case" means a case relating to an offence, and not being a warrant-case and as per **Section 2 (x)** "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Cr P C classifies an offence as either cognizable or non-cognizable, and a trial procedure as summons case or warrant case.

Trial in Warrant Cases

Warrant cases are those cases in which an offence attracts a penalty of imprisonment for more than seven years and it includes offences punishable with death and life imprisonment. In such cases, the trial starts either by filing of FIR or by filing a complaint before a magistrate. And if the magistrate finds that the case relates to an offence carrying a punishment for more than two years, the case is sent to the sessions court for trial.

Section 193 of the Criminal Procedure Code clearly states that the session court can not take cognizance of any offence unless the case has been sent to it by a magistrate. The process of sending it to sessions court is generally called *committing it to sessions court.*

Trial in Summon Cases

A summon case is a case which is not a warrant case. So in simple words, those cases in which an offence is punishable with an imprisonment of less than two years is a summon case. In this case, one must understand that if a magistrate, after looking into the case, thinks that a case is not a summon case, he may convert it into a warrant case. In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called “notice”, to the accused when the person appears in pursuance to the summons.

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[23] Available at http://hanumant.com/CrPC-DifferencesShortNotes.html, visited on 15th Nov 2013

C) SUMMARY TRIAL[24]

A summary trial implies speedy disposal. A summary case is one which can be tried and disposed of at once. Needless to say, the summary procedure is not intended for a contentious and complicated case which merits a full and lengthy inquiry.

Thus, the object of summary trial is to have a record which is sufficient for the purpose of justice, and yet, not so long as to impede a speedy disposal of the case. In other words, a summary trial is "summary" only in respect of the record of its proceedings, and not in respect of the proceedings themselves, which should be complete and carefully conducted, as in any other criminal case.

Under the old Code, in a summary trial, the summons procedure was to be followed in the summons-cases and the warrant procedure in warrant-cases. However, the present Code has now done away with this distinction, and the procedure has been simplified by providing that, in a summary trial, all cases should be tried by the summons procedure, whether the case is a summons-case or warrant-case.

Section 260 lays down that, notwithstanding anything contained in the Criminal Procedure Code, any Judicial Magistrate or any Metropolitan Magistrate, or any First Class Magistrate specially empowered for this purpose by the High Court, may, if he thinks fit try the offences specified below in a summary manner.

However, if in the course of a summary trial, it appears to the Magistrate that the nature of the case is such that it is undesirable to try it in a summary fashion, the Magistrate may recall any

[24] Difference between 'Summary Trial' and 'Ordinary Trial'? – Explained!, an article by by Rehaan Bansal, available at http://www.shareyouressays.com/117993/difference-between-summary-trial-and-ordinary-trial-explained

witness who may have been already examined, and proceed to rehear the case in the manner prescribed by the Code.

The following nine offences have been singled out by S. 260 for summary trials[25]:

(i) Offences not punishable with death, imprisonment for life, or imprisonment for a term exceeding two years;

(ii) Theft, under S. 379, S. 380 or S. 381 of the Indian Penal Code. 1860, where the value of the property stolen does not exceed Rs. 2,000:

(iii) Receiving or retaining stolen property, under S. 411 of the Indian Penal Code, where the value of the property does not exceed Rs. 2,000;

(iv) Assisting in the concealment or disposal of stolen property, under S. 414 of the Indian Penal Code, where the value of such property does not exceed Rs. 2,000;

(v) Offences under S. 454 and 456 of the Indian Penal Code (namely, lurking house trespass)

(vi) Insult with intent to provoke a breach of the peace, under S. 504, and criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both, under S. 506 of the Indian Penal Code;

(vii) Abetment of any of the foregoing offences;

(viii) An attempt to commit any of the foregoing offences, when such attempt is also an offence; and

(ix) Any offence constituted by an act in respect of which a complaint may be made under S. 20 of the Cattle Trespass Act, 1871.

[25] The Code of Criminal Procedure 1973, Bare Act, (2 of 1974) as amended by The Code of Criminal Procedure (Amendment) Act 2008, (5 of 2009), pg 147

From what has been stated earlier, it is clear that it is in the discretion of a Magistrate to try any of the above offences in a summary manner. Whether a particular case is to be tried summarily should be determined by the offence complained of and the testimony of the Complainant.[26]

[26] The Code of Criminal Procedure 1973, Bare Act, (2 of 1974) as amended by The Code of Criminal Procedure (Amendment) Act 2008, (5 of 2009)

CHAPTER VII

RECORDING OF EVIDENCE

Recording of the Prosecution Evidence[27]

After the charges have been framed against an accused, the prosecution is required to produce before the court, all the evidence collected by the investigating agency. It is to be noted that when the investigating agency produces the evidence before the court, the evidence has to be supplemented with the statement of the prosecution witnesses (PWs). The process of recording the statement of PWs is called **Examination-in-Chief.** The evidence which is brought before the court and which the court considers is called "Exhibit". The witnesses brought by the prosecution are expected to support the case presented by the prosecution and if they fail to do so, they are declared hostile and the prosecution may request the court not to rely on the statement of such a witness.

In case the witness supports the case of the prosecution, the defense is entitled to cross examine the witness so that they could find out the discrepancies in the statement of the witness concerned. If the defense succeeds in finding the discrepancies in the statement of the witnesses, they may ask the court not to rely on the statement of the said witness.

Statement of the accused

Section 313 of the Criminal Procedure code empowers the court to ask for an explanation from the accused if any. The basic idea is to give an opportunity of being heard to an accused an explain the facts and circumstances appearing in the evidence against him. Under this section, an accused shall not be administered an oath and the accused may refuse to answer the questions so asked. The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him.

[27] Available at http://spreadlaw.blogspot.com/2011/11/criminal-trial-in-indian-law.html

Evidence of Defence[28]

After the statement of the accused is over, the court applies its mind and tries to find out if the accused has committed any offence or not. If the court reaches the conclusion that no offence has been committed by the accused, he is acquitted. It must be noted that while acquitting an accused, the judge is expected to give reasons for acquitting the accused.

In cases of accused not being acquitted by the court, the defense is given an opportunity to present any defense evidence in support of the accused. The defense can also produce its witnesses and the said witnesses are cross examined by the prosecution. In India, generally the defense does not provide defense evidence as the criminal justice system in India puts burden of proof on the prosecution to prove that a person is guilty of an offence beyond the reasonable doubt.

ROLE OF WITNESSES :

The Supreme Court through Justice J.M. Panchal, in Vikas Kumar Roorkewal vs State of Uttarkhand & Ors.[29], has examined the role of witnesses in the criminal justice system. The Court has, inter alia, observed that the witnesses play an integral role in the dispensation of justice and protection of witnesses, through legislative measures, can go a long way in conducting a fair trial. The court observed as under;

The learned counsel for the petitioner has placed reliance on a decision of this Court in Himanshu Singh Sabharwal vs. State of M.P. and others[30], where this Court has observed as under: -

"Witnesses" as Benthem said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial."

There are several types of witnesses that may provide testimony in a court hearing:

Eyewitness

[28] Available at http://spreadlaw.blogspot.com/2011/11/criminal-trial-in-indian-law.html
[29] Decided by SC on 11th January 2011
[30] (2008) 4 SCR 783

An eyewitness brings observational testimony to the proceedings after having seen the alleged crime or a facet of it. It is sometimes unreliable (see "Reliability of witness accounts" below) however is presumed to be better than circumstantial evidence. When several people witness a crime, lawyers will often look for consistency among the recounting of events in order to determine what actually happened.

Expert witness

An expert witness is one that has superior knowledge to the average person when it comes to the topic they will testify about. These people are often doctors, forensic experts or psychologists.

Character witness

This witness vouches under oath to the good reputation of another person often in the community where that person lives. The witness is there typically to say the defendant is a good person and possesses solid ethical qualities or morality. This kind of testimony is key when the defendant's honesty or morality is being question, which often happens in fraud cases.

SC Court, on various occasions, had opportunity to discuss the importance of fair trial in Criminal Justice System and various circumstances in which a trial can be transferred to dispense fair and impartial justice. It would be advantageous to notice a few decisions of this Court with regard to the scope of Section 406 of Code of Criminal Procedure. In Gurcharan Dass Chadha vs. State of Rajasthan[31], this Court held as under: -

"A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether apprehension is reasonable or not. To judge the reasonableness of the apprehension the state of the mind of the

[31] AIR 1966 SC 1418

person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the court to be a reasonable apprehension."

In Maneka Sanjay Gandhi vs. Ram Jethmalani[32], this Court has observed as under: - "Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."

In K. Anbazhagan vs. Superintendent of Police[33], this Court held as under: -

"Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner."

In Abdul Nazar Madani vs. State of Tamil Nadu[34], this Court observed as under: - "The purpose of criminal trial is to dispense fair and impartial justice uninfluenced by extraneous

[32] (1979) 4 SCC 167
[33] (2004) 3 SCC 767

considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witness to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society."

[34] (2000) 6 SCC 204

CHAPTER VIII

FINAL ARGUMENTS

Final arguments are a very important aspect in a criminal trial procedure.

Final Arguments of both the sides

Once the defense evidence of the accused is over, the prosecution presents its final arguments. In final arguments, the prosecution generally sum up its case against the accused. The public prosecutor briefly narrates the facts of the case to the court and narrates the important aspects noted in the deposition of the witnesses conducted at the time of evidence. The public prosecutor also points out the inferences drawn from the medical reports, forensic reports etc, in support of its case.

After the final arguments of the prosecution are over, the defense also present its final arguments. The defence counsel will also state the facts and deposition of the witnesses which help to prove the innocence of the accused.

The prosecution as well as the defence counsel rely on authorities helping to prove their case.

After the arguments of defence counsel is over are over, the prosecution will rebut the arguments of the defence, after the arguments are over the court generally reserve its judgment.

CHAPTER IX

JUDGMENT

The judgment in every trial in any criminal court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders. –

a. By delivering the whole of the judgment or

b. By reading out the whole of the judgment or

c. By reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.[35]

Delivery of Judgment - After hearing the prosecution and the defence counsel, on application of mind, the judge delivers a final judgment holding an accused guilty of offence or acquitting him of the particular offence. If a person is acquitted, the prosecution is given time to file an appeal and if a person is convicted of a particular offence, then date is fixed for arguments on sentence.

Arguments on sentence - Once a person is convicted of an offence, both the sides present their arguments on what punishment should be awarded to an accused. This is generally done in cases which are punished with death or life imprisonment.

Judgment with punishment - After the arguments on sentence, the court finally decides what should be the punishment for the accused. While punishing a person, the courts consider various theories of punishment like reformative theory of punishment and deterrent theory of punishment. Court also considers the age, background and history of an accused and the judgment is pronounced accordingly.

[35] The Code of Criminal Procedure 1973, Bare Act, (2 of 1974) as amended by The Code of Criminal Procedure (Amendment) Act 2008, (5 of 2009) pg 193.

CHAPTER X

CONCLUSION[36]

At a time when people are getting impatient with judicial delays, the Supreme Court has stepped in to curb the tendency of trial courts to liberally grant adjournments at the instance of lawyers. It said that trial courts were flouting "with impunity" the Criminal Procedure Code mandate for conducting proceedings on a day-to-day basis after witness examination starts and were easily granting adjournments.

A bench of Justices K S Radhakrishnan and Dipak Misra expressed "anguish, agony and concern" over the adjournments granted by a Punjab trial court in a bride burning case which stretched the process of examination of witnesses to more than two years.

"On perusal of dates of examination-in-chief and cross-examination, it neither requires Solomon's wisdom nor Argus eyes (mythological giant with 100 eyes) scrutiny to observe that the trial was conducted in an absolute piecemeal manner as if the entire trial was required to be held at the mercy of the counsel," Justice Misra, who authored the judgment, said.

Referring to Section 309 of the CrPC, the bench said once a case reached the stage of examination of witnesses, the law mandated that it "shall be continued from day-to-day until all witnesses in attendance have been examined". The section provides that if for some unavoidable reason the court was to grant adjournment, it must record its reasons in writing.
"It is apt to note here that this court expressed its distress that it has become a common practice and regular occurrence that the trial courts flout the legislative command with impunity," the bench said.

The SC judges said the criminal justice dispensation system cast a heavy burden on the trial judge to have full control over the proceedings. "The criminal justice system has to be placed on proper pedestal and it cannot be left to the whims and fancies of the parties or their counsel," they said.

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[36] An article published on Times of India dt. 15/05/2013

"A trial judge cannot be a mute spectator to the trial being controlled by the parties, for it is his primary duty to monitor the trial and such monitoring has to be in consonance with the Code of Criminal Procedure," the bench said.

The Supreme Court wanted trial judges to keep in mind the mandate of CrPC and not get guided by their thinking "or should not become mute spectators when a trial is being conducted by allowing the control to the counsel for parties".

"They have their roles to perform. They are required to monitor. They cannot abandon their responsibility. It should be borne in mind that the whole dispensation of criminal justice system at the ground level rests on how a trial is conducted. It needs no special emphasis to state that dispensation of criminal justice system is not only a concern of the bench but has to be the concern of the bar," it said.

On the case of bride burning and ill-treatment meted out to daughters-in-law, the apex court said, "A daughter-in-law is to be treated as a member of the family with warmth and affection and not as a stranger with despicable and ignoble indifference. She should not be treated as a housemaid. No impression should be given that she can be thrown out of her matrimonial home at any time."

Given the enormous backlog of cases in Indian courts, particularly at the lower levels, any measure that helps speed up processes is welcome. Getting rid of needless adjournments is certainly an important step and the Supreme Court must be thanked for stepping in to curb them. We hope that the implementation of this directive will be rigorous.

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