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INDIAN CODE OF CRIMINAL PROCEDURE, 1973, SECTIONS 173, 228 AND
437

The Code of Criminal Procedure, 1973

(2 of 1974)

as amended by
The Lokpal and Lokayuktas Act, 2013
(1 of 2014)
(w.e.f. 16-1-2014)

with
State Amendments

along with
SHORT NOTES

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(4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

171. Complainant and witnesses not to be required to accompany police officer and not to be subject to restraint.—No complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

172. Diary of proceedings in investigation.—(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

¹[(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.]

¹[(1B) The diary referred to in sub-section (1) shall be a volume and duly paginated.]

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.

173. Report of police officer on completion of investigation.—(1) Every investigation under this Chapter shall be completed without unnecessary delay.

²[(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;

1. Ins. by Act 5 of 2009, sec. 15 (w.e.f. 31-12-2009).

2. Ins. by Act 5 of 2009, sec. 16(a) (w.e.f. 31-12-2009).

- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170;
- ¹[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C ²[section 376D or section 376E of the Indian Penal Code (45 of 1860)].]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
- (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

1. Ins. by Act 5 of 2009, sec. 16(b) (w.e.f. 31-12-2009).

2. Subs. by Act 13 of 2013, sec. 17, for “or 376D of the Indian Penal Code (45 of 1860)” (w.r.e.f. 3-2-2013)

COMMENTS

(i) Merely because two separate complaints had been lodged, did not mean that they could not be clubbed together and one charge-sheet could not be filed; *C. Muniappan v. State of Tamil Nadu*, AIR 2010 SC 3718.

(ii) When a power under sub-section (8) of section 173 is exercised, the court ordinarily should not interfere with the statutory powers of the investigating agency. The court cannot issue directions to investigate the case from a particular angle or by a particular agency; *Popular Muthiah v. State, Represented by Inspector of Police*, (2006) 7 SCC 296.

(iii) The "police report" (result of investigation under Chapter XII of the Code of Criminal Procedure) is a conclusion that an investigating officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent court to take cognizance there upon under section 190(1)(b) of the Code and to proceed with the case for trial, and it cannot rely on the investigation or the result thereof; *Kaptan Singh v. State of Madhya Pradesh*, (1997) 4 Supreme 211.

(iv) Power of police to conduct further investigation, even after laying final report, is recognised under section 173 (8); *Sri B.S.S.V.V. Maharaj v. State of Uttar Pradesh*, 1999 Cr LJ 3661 (SC).

174. Police to inquire and report on suicide, etc.—(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place, where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) ¹[When—

- (i) the case involves suicide by a woman within seven years of her marriage; or
- (ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or
- (iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or
- (iv) there is any doubt regarding the cause of death; or

1. Subs. by Act 46 of 1983, sec. 3, for certain words (w.e.f. 25-12-1983).

226. Opening case for prosecution.—When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

COMMENTS

(i) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. The Judge is not a mere Post Office to frame the charge, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or documents produced before the court which *ex-facie* disclosed that there was suspicious circumstances against the accused; *P. Vijayan v. State of Kerala*, AIR 2010 SC 663.

(ii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Magistrate will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal; *Yogesh v. State of Maharashtra*, (2008) 10 SCC 394.

(iii) The order of discharge should be supported by reasons; *Sunil Kumar Jha alias Bittu Jha v. State of Bihar*, (1997) 2 Crimes 131 (Pat).

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

- (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 Magistrate¹ [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.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

STATE AMENDMENTS

Chhatisgarh:

In section 228, in sub-section (2), after the words “to the accused”, add the following words, namely:—

“present in person or through the medium of electronic video linkage and being represented by his pleader in the Court”.

[*Vide Chhattisgarh Act 13 of 2006, sec. 4, (w.e.f. 13-3-2006).*]

1. Subs. by Act 25 of 2005, sec. 22, for “, and thereupon the Chief Judicial Magistrate” (w.e.f. 23-6-2006).

Karnataka:

In section 228, in sub-section (1), in clause (a), for the words "to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate", substitute the words "to the Chief Judicial Magistrate or to any Judicial Magistrate competent to try the case and thereupon the Chief Judicial Magistrate or such other Judicial Magistrate to whom the case may have been transferred".

[Vide Karnataka Act 22 of 1994, sec. 2 (w.e.f. 18-5-1994).]

Ed. This amendment was made prior to the amendment made by Act 25 of 2005 (w.e.f. 23-6-2006).

West Bengal:

In section 228, in sub-section (1), in clause (a), for the words "to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate", substitute the words "to the Chief Judicial Magistrate or to any Judicial Magistrate competent to try the case, and thereupon the Chief Judicial Magistrate or such other Judicial Magistrate to whom the case may have been transferred".

[Vide West Bengal Act 63 of 1978, sec. 3 (w.e.f. 1-6-1979).]

Ed. This amendment was made prior to the amendment made by Act 25 of 2005 (w.e.f. 23-6-2006).

COMMENTS

(i) The responsibility of framing the charge is that of the court and it has to judicially consider the question of doing so. Without full advertent to the material on the record it must not blindly adopt the decision of the prosecution; *Sunil Kumar Jha alias Bittu Jha v. State of Bihar*, (1997) 2 Crimes 131 (Pat).

(ii) The materials, other than those produced by the prosecution, can also be looked into and should be considered at the time of framing of charge, to find out whether a *prima facie* case against the accused is made out or not; *Madho Singh v. State of Rajasthan*, (1997) 2 Crimes 358 (Raj).

229. Conviction on plea of guilty.—If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

230. Date for prosecution evidence.—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.

231. Evidence for prosecution.—(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) 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.

232. Acquittal.—If, after taking the evidence for the prosecution, examining the accused 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.

COMMENTS

Once a co-accused has been discharged or acquitted, he ceases to be a co-accused and there is no impediment to summon him as a witness. He can be a witness for the prosecution as well as for the defence; *Sarbeswar Panda v. State of Orissa*, (1997) 2 Crimes 534 (Ori).

437. When bail may be taken in case of non-bailable offence.—¹[(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—

- (i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
- (ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of ²[a cognizable offence punishable with imprisonment for three years or more but not less than seven years]:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:]

³[Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, ⁴[the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of

1. Subs. by Act 63 of 1980, sec. 5(a), for sub-section (1) (w.r.e.f. 23-9-1980).

2. Subs. by Act 25 of 2005, sec. 37(i)(a), for "a non-bailable and cognizable offence" (w.e.f. 23-6-2006).

3. Ins. by Act 25 of 2005, sec. 37(i)(b) (w.e.f. 23-6-2006).

4. Subs. by Act 63 of 1980, sec. 5(b), for "the accused shall, pending such inquiry, be released on bail". (w.r.e.f. 23-9-1980).

an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) ¹[the Court shall impose the conditions,—

- (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,
- (b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and
- (c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,

and may also impose, in the interests of justice, such other conditions as it considers necessary.]

(4) An officer or a Court releasing any person on bail under sub-section (1), or sub-section (2), shall record in writing his or its ²[reasons or special reasons] for so doing.

(5) Any Court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

STATE AMENDMENT

Punjab and Union Territory of Chandigarh:

In relation to the "specified offences" as defined in clause (b) of section 2 of the Code of Criminal Procedure (Punjab Amendment) Act, 1983 (22 of 1983), in section 437, after sub-section (7), insert the following sub-section, namely:—

1. Subs. by Act 25 of 2005, sec. 37(ii), for "the Court may impose any condition which the Court considers necessary—
 - (a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or
 - (b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or
 - (c) otherwise in the interests of justice." (w.e.f. 23-6-2006).
2. Subs. by Act 63 of 1980, sec. 5(c), for "reasons" (w.r.e.f. 23-9-1980).

"(8) Before releasing the accused on bail under sub-section (1) or sub-section (2), the court shall give the prosecution a reasonable opportunity to show-cause against such release."

[Vide Punjab Act 22 of 1983, sec. 10 (w.e.f 27-6-1983).]

COMMENTS

(i) Successive applications of bail must receive serious consideration at hands of Court entertaining bail application at later stage when same had been rejected earlier; *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav*, AIR 2005 SC 921.

(ii) It has been held that since the jurisdiction is discretionary, it is required to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general; *Mansab Ali v. Irsan*, AIR 2003 SC 707.

(iii) In non-bailable cases in which the person is not guilty of an offence punishable with death or imprisonment for life, the court will exercise its discretion in favour of granting bail subject to sub-section (3) of section 437 if it deems necessary to act under it; *Anil Sharma v. State of Himachal Pradesh*, (1997) 3 Crimes 135 (HP).

(iv) Unless exceptional circumstances are brought to the notice of the court which may defeat the proper investigation and fair trial, the court will not decline bail to a person who is not accused of an offence punishable with death or imprisonment for life; *Anil Sharma v. State of Himachal Pradesh*, (1997) 3 Crimes 135 (HP).

¹[437A. Bail to require accused to appear before next appellate Court.—(1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply.]

***438. Direction for grant of bail to person apprehending arrest.—²[(1)** Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, *inter alia*, the following factors, namely:—

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and

1. Ins. by Act 5 of 2009, sec. 31 (w.e.f. 31-12-2009).

2. Subs. by Act 25 of 2005, sec. 38, for sub-section (1) (effective date yet to be notified). Sub-section (1), before substitution, stood as under:

"(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail."

* As per section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989)—"Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."