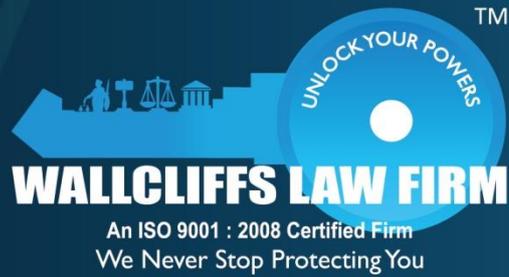


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Q&A



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# THE CRIMINAL PROCEDURE CODE, 1973

## Q&A - PART IV

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**CHAPTER - XXIV**  
**GENERAL PROVISIONS AS TO ENQUIRIES AND TRIALS**  
**(SEC.300 - 327)**

**Q1. What are the provisions relating to the enquiries and trials?**

- A person tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall not be liable to be tried against for the same offence. **(Sec.300)**
- The Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which the case is under inquiry, trial, or appeal. **(Sec.301)**
- No police officer shall be permitted to conduct the prosecution if he has taken part in the investigation to the offence to which the accused is prosecuted. **(Sec.302)**
- Any person accused of an offence before a Criminal Court or against whom proceedings are instituted, may of right be defended by a pleader of his choice. **(Sec.303)**
- If the accused is not represented by a pleader, and it appears to the court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence. **(Sec.304)**

**Q2. When the Magistrate cannot dispose of?**

- If the inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption,
  - a) He has no jurisdiction to try the case or commit it for trial,
  - b) Which one should be tried or committed for trial by some other Magistrate in the district.
  - c) The case should be tried by the Chief Judicial Magistrate.
- The Magistrate to whom the case is submitted may if so empowered, either try the case himself or refers to the subordinate to him having jurisdiction or commit the accused of trial. **(Sec.322)**



**CHAPTER - XXVII**  
**THE JUDGEMENT (SEC.353 - 365)**

**Q3. What is judgment?**

- The judgement in every trial in any Criminal Court, or original jurisdiction shall be pronounced in open court by the presiding officer immediately after the termination of the trial.
- The notice shall be given to the parties or their pleaders,
  - a) By delivering the whole of the judgment.
  - b) By reading out the whole of the judgment.
  - c) By reading out the operative part of the judgment and explaining the substance of the judgment in a language that is understood by the accused or his pleader.
- Where the judgment is delivered, the presiding officer shall be taken down in shorthand, sign the transcript and every page as soon as it is ready and write the date of the judgment.
- Where the judgment or the operative part is read out, it shall be dated and signed by the presiding officer in open Court.
- Where the judgment is pronounced, the whole judgment or a copy shall be immediately made available for the perusal of the parties or their pleaders free of cost.
- If the accused is in custody, he shall be brought up to hear the judgment pronounced.
- If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced.
- No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader. **(Sec.353)**

**Q4. What is the procedure to release on probation of good conduct or after admonition?**

When any person not under twenty one years of age is convicted of an offence punishable with fine or with imprisonment for a term of seven years or any woman is convicted of an offence not punishable with death or imprisonment for life and no previous conviction is proved against the offender and if it appears to the Court, with regard to the age, character or antecedents of the offender should be released on probation of good conduct. **(Sec.360)**



**Q5. What is the procedure to give a copy of the judgment to the accused and other persons?**

- When the accused is sentenced to imprisonment, after the pronouncement of the copy of the judgment shall be given to him.
- On the application of the accused a certified copy of the judgment shall be given in his own language or in the language of the Court.
- When the accused is sentenced to death by any Court and an appeal lies from such judgment, the Court shall inform him of the period within which if he wished to appeal, his appeal should be preferred.
- The High court shall provide copies of any judgment or order of a Criminal Court to any person who is not affected by a judgment or order on payment of fees. **(Sec.363)**

**CHAPTER - XXVIII**

**SUBMISSION OF DEATH SENTENCES FOR CONFIRMATION**

**(SEC.366 - 371)**

**Q6. What are the procedures for confirming the death sentences?**

- When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.
- The Court passing the sentence shall commit the convicted person to jail custody under a warrant. **(Sec.366)**
- When such proceedings are submitted, if the High Court thinks that a further inquiry should be made or additional evidence, it may make such inquiry or taken by the Court of Session.
- When the inquiry or evidence is not made or taken by the High court, the result of such inquiry or evidence shall be certified to such Court. **(Sec.367)**



**CHAPTER - XXIX**  
**APPEALS (SEC. 372 - 394)**

**Q7. What is the procedure for appeals?**

- The appeal shall not lie from any judgment or order of a Criminal Court.
- The victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. **(Sec.372)**
- Any person convicted on a trial held by a High court in its extraordinary criminal jurisdiction may appeal to the Supreme Court.
- Any person convicted on a trial held by a High court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.
- Any person convicted on the trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against may appeal to the High Court. **(Sec.374)**
- Where an accused person has pleaded guilty and convicted on such plea, there shall be no appeal,
  1. If the conviction is by a High Court or
  2. If the conviction is by a Court of Session, Metropolitan Magistrate, or Magistrate of the first or second class. **(Sec.375)**
- Where the High Court on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court. **(Sec. 379)**
- An appeal against a conviction on a trial held by a Magistrate of the second class may be disposed of by an Assistant Session Judge or a Chief Judicial Magistrate. **(Sec.381)**
- Every appeal shall be made in the form of a petitioner in writing presented by the appellant and every such petition shall be accompanied by a copy of the judgment or order appealed against. **(Sec.382)**



**CHAPTER - XXX**  
**REFERENCE AND REVISION (SEC.395 - 405)**

**Q8. What is the procedure to refer to High Court?**

- Where any court is satisfied that a case pending before it involves the question as to the validity of the Act, Ordinance or Regulation of which is necessary for the disposal of the case and is invalid or inoperative but has not been so declared by the High Court to which the Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and reasons and refer the same for the decision of the High Court.
- A Court of Session or a Metropolitan Magistrate, if it thinks fit in any case pending before it do not apply, refer for the decision of the High court any question of law arising in the hearing of such case.
- Any Court making a reference to the High Court may be pending the decision of the High Court, either commit the accused to jail or release him on bail to appear which called upon. **(Sec.395)**
- When a question so referred the High court shall pass order and shall cause a copy of such order to be sent to the Court by which the reference was made which shall dispose of the case. **(Sec.396)**

**Q9. What are the powers of the High Court in revision?**

- Any proceeding the record of which has been called for by itself or comes to its knowledge, the High Court may in its discretion exercise any of the powers conferred on a Court of Appeal.
- No order shall be made to the prejudice of the accused or other people unless he has an opportunity of being heard either personally or by pleader in his own defence.
- If the appeal lies under this code and no appeal is brought, no proceeding by way of revision shall be entertained who would have appealed.
- An application for revision has been made to the High Court by any person and the High court is satisfied that such application was made under the erroneous belief that no appeal lies and that it is necessary for the interest of justice.
- The High court may treat the application for revision as a petition of appeal. **(Sec.401)**



## **CHAPTER - XXXI**

### **TRANSFER OF CRIMINAL CASES (SEC.406 - 411)**

#### **Q10. What is the power of the Supreme Court to transfer cases and appeals?**

If it is made to appear to the Supreme Court that an order is expedient for the ends of justice, it may direct the particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction to another High Court. **(Sec.406)**

#### **Q11. What is the power of the High Court to transfer cases and appeals?**

- Whenever it is made to appear to the High Court,
  - a) A fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto,
  - b) Some question of law of unusual difficulty is likely to arise, or
  - c) An order is required or will tend to the general convenience of the parties or witnesses or is expedient for the ends of justice.

It may order,

1. Any offence be inquired into or tried by any Court not qualified, but competent to inquire into or try such offence.
  2. Any particular case or appeal or class of cases or appeals be transferred from a Criminal Court of equal or superior jurisdiction,
  3. That any particular case be committed for the trial to a Court of Session,
  4. Any particular case or appeal be transferred to and tried before itself.
- The High Court may act on the report of the lower Court or on the application of a party interested.
  - Every application made by an accused person, the High court may direct him to execute a bond with or without sureties, for the payment of any compensation which the High Court may award.
  - Every accused person making such application shall give to the Public Prosecutor notice in writing of the application together with a copy of the grounds on which it is made and no order shall be made on the merits of the application.



- Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may if the satisfied to do interest of justice, order that pending the disposal of the application, the proceedings in the subordinate Court shall have stayed.
- Where an application for an order is dismissed, the High Court may if it is an opinion that the application was frivolous or vexatious, order the applicant to pay compensation.
- When the High Court order that a case is transferred from any Court for trial before itself, it shall observe such trial shall be made in the same procedure which that Court would observe the case if had not been transferred. **(Sec.407)**

**CHAPTER - XXXII**  
**EXECUTION, SUSPENSION REMISSION, AND COMMUTATION OF**  
**SENTENCE (SEC.414 - 411)**

**Q12. What is the procedure to execute the death sentence under this chapter?**

- When a case submitted before the High court for the confirmation of a sentence of death, the Court of Session receives the order of confirmation or other order of the High Court, it shall cause such order to be carried into effect by issuing a warrant. **(Sec.413)**
- When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall on receiving the order of the High Court, case the sentence by issuing a warrant. **(Sec.414)**
- Where a person is sentenced to death by the High Court and an appeal from its judgment lies to the Supreme Court, the High court shall postpone it for preferring such appeal has expired or appeal preferred is disposed of.
- If the death sentence is confirmed by the High court, and the person sentenced makes an application to the High Court for the grant of a certificate, the High Court shall order the execution of sentence to be postponed till the period of preferring an appeal to the Supreme Court.



- If the sentence of death is passed or confirmed by the High Court and the High Court is satisfied that the person sentenced intends to present a petition to the Supreme Court for the grant of Special Leave to appeal under Section 136 of the Constitution.
- The High Court shall order to postpone the sentence if it considers sufficient to enable him to present such petition. **(Sec.415)**

**Q13. What are the provisions relating to imprisonment under this chapter?**

- If any person is imprisoned or committed to custody in confinement in a civil jail, the Court of Magistrate ordering the imprisonment or committal may direct the person be removed to a criminal jail. **(Sec.417)**
- Where the accused is sentenced to imprisonment for life, the Court passing the sentence shall forward a warrant to the jail or other place where he is or be confined.
- Where the accused is not present in Court when he is sentenced to such imprisonment, the Court shall issue a warrant for his arrest forward him to jail or other places which he is confined and the sentence shall commence on the date of his arrest. **(Sec.418)**
- Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place to be confined. **(Sec.419)**
- Where the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor. **(Sec.420)**

**Q14. What is the power of the High Court to suspend or remit imprisonment?**

- If the person has been sentenced to imprisonment for an offence, the appropriate government by without conditions or on any conditions, the person sentenced accepts, suspend the execution of his sentence or remit the whole or part of the punishment.
- If the application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate government any require the presiding Judge to state the opinion as to whether the application should be granted or refused and forward the statement of opinion a certified copy of the record of the trial.



- If any condition which a sentence has been suspended or remitted, the appropriate Government may cancel the suspension or remission and the person whose favour the sentence has been suspended or remitted be arrested by any police officer without a warrant and remanded to undergo the unexpired portion of the sentence.
- The condition on which a sentence is suspended or remitted may be fulfilled by the person in whose favour the sentence is suspended or remitted.
- In case of any sentence passed on a male person above the age of eighteen years, no such petition by the person sentenced shall be entertained unless the person sentenced is in jail,
  1. When such petition is made by the person sentence, if it presented through the officer-in charge of the jail, or
  2. When such a petition is made by any other person, it contains a declaration that the person is sentenced to jail. **(Sec. 432)**

## **CASE LAWS**

### ***Case 1***

#### ***V.N. Patil V. Niranjan Kumar, 2021 SCC Online SC 172.***

Held - Section 311 deals with the power to summon material witness, or examine person. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and reexamine any person already examined and the Court shall summon and examine or recall any such person if his evidence appears to be essential.

### ***Case 2***

#### ***Shivaji Chintappa Patil V. State of Maharashtra., 2021 SCC Online SC 158.***

Held - The false explanation or non-explanation of the accused to the questions posted by the court under Section 313 of the Code of Criminal Procedure, cannot be used as a link to complete the chain. It can be used as an additional circumstance, when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of the accused.



### **Case 3**

#### ***Sujit Kumar Shaw & Ors V. State of Jharkhand & Ors., Cr.M.P.No. 2194 of 2020.***

Held -

- The role of the Court recommendatory in nature and it cannot fix any quantum of victim compensation nor can direct the authority to make payment of the same to the victim while exercising jurisdiction under Section 357 A of CrPc.
- The Court recommends payment of victim compensation by way of interim measure at any stage of the proceeding, including at the stage of considering bail application.
- When a person is an accused and the Court is not sure as to whether he has committed the offence or not, in that situation, the accused cannot be saddled with the liability to pay compensation.

### **Case 4**

#### ***Ajay Kumar @ Bitty V. State of Uttarkhand, Criminal Appeal No.88 of 2021.***

Held - The power of a Trial Court under Section 319 of the Criminal Procedure Code to proceed against other persons appearing to be guilty of offence is a discretionary and extraordinary power which has to be exercised sparingly.

### **Case 5**

#### ***Karan v. State NCT of Delhi, CRL.A.352/2020.***

Held - Section 357(3) empowers the court to award compensation to victims who have suffered by the action of the accused and held that the word "may" in Section 357(3) CrPc means "shall" and therefore Section 357 CrPc is mandatory.

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