

E Lectures.

9th Semester (Code of Criminal Procedure)

Unit -V :-

SECTION . 211 .Contents of charge.

(1) Every charge under this Code shall state the offence with which the accused is charged. (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only. (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge. (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case. (6) The charge shall be written in the language of the Court. (7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed. Illustrations (a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code (45 of 1860); that it did not fall within any of the general exceptions of the said Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it. 910 (b) A is charged under section 326 of the Indian Penal Code (45 of 1860), with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the

case was not provided for by section 335 of the said Code-, and that the general exceptions did not apply to it. (c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code (45 of 1860); but the sections under which the offence is punishable must, in each instance, be referred to in the charge. (d) A is charged under section 184 of the Indian Penal Code(45 of 1860) with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

(Note:- a charge is a written document containing the description of the offences which the court, either in an inquiry or trial, finds prima facie proved by evidence before it to have been committed by the accused so as to require him to defend himself. In an old case ' Reily vs Emperor'-ILR 28 Cal 434/ Waroo vs Emperor-AIR 1948 Sind 40, a charge has been defined as a precise formulation of the specific accusations made against a person who is entitled to know its nature at the very earliest stage. A charge is a very important step in a criminal proceeding. it separates the inquiry stage from trial. The term charge has been defined in sec 2(b) of the code. The charge must be clear and specific. It must refer to the section of the IPC under which the offence charged is punishable and will include offences as mentioned in the penal laws for the time being in force. It should also specify distinctly the portion of the section which is applicable to the case. Again we find in Manipal Vs state of Haryana 2010 4 CrLJ 4450 SC that the object of the framing of charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must contain the particulars of date, time, place, and the person against whom the offence was committed which are reasonably sufficient to give the accused notice of the matter with which he is charged.)

SECTION 212. Particulars as to time, place and person.

(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. (2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, It shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219; Provided that the time included between the first and last of such dates shall not exceed one year.

SECTION 213. 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 in which the alleged offence was committed as will be sufficient for that purpose. Illustrations (a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected. (b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B. (c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false. (d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions. 911 (e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B. (f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

(Note:- the object of the section is firstly to ensure that the accused has sufficient notice of the matter with which he is charged as otherwise he will be seriously prejudiced in his defense and secondly to enable the court to keep in view the real points in issue and to confine the evidence to such points.)

SECTION . 214. Words in charge taken in sense of law under which offence is punishable.

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

SECTION . 215. Effect of errors.

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

Illustrations (a) A is charged under section 242 of the Indian Penal Code (45 of 1860), with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material. (b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material. (c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defense. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error. (d) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh and the date of the murder

was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh: The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial. (e)A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haider Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defense were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

SECTION . 216.Court may alter charge.

(1) Any Court may alter or add to any charge at any time before judgment is pronounced. (2) Every such alteration or addition shall be read and explained to the accused. (3)If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defense or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge. (4)If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary. (5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

(Note:- this section confers jurisdiction on all the courts to alter or add to any charge framed earlier at any time before judgment is pronounced and sub sections 2 to 5 prescribe the procedure to be followed after such addition or alteration. The section invests the courts with an all comprehensive powers of remedying defects, whether they arise out of the framing of a charge or the

non framing of a charge and whether they are discovered at the inception of the trial or at any subsequent stage of it prior to the pronouncement of judgment. Further a court has the power to add a new charge but only if the evidence and the circumstances of the case justify.)

SECTION . 217. Recall of witnesses when charge altered.

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed- (a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice ; (b) also to call any further witness whom the Court may think to be material.

(Note:- this section provides that whenever a charge is altered or added to by the court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re summon and the examine with reference to such alteration or addition any witness who may have been examined and also to call any further witnesses whom the court may think to be material. A witness so recalled after the charge is amended, can be examined only with regard to the modified charge. The accused has a right to recall prosecution witnesses after the alteration of the charge even if such alteration does not affect his defense. Such right however can be denied by the court if it is of the opinion that the purpose is only to delay and to defeat the ends of justice and is vexatious.)

SECTION 218. Separate charges for distinct offences.

(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately : Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges

framed against such person. 913 (2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223. Illustration A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

SECTION 219. Three offences of same kind within year may be charged together.

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three. (2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law : Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

SECTION . 220. Trial for more than one offence.

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. (2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence. (3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished,

the person accused of them may be charged with, and tried at one trial for, each of such offences. 914 (4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts. (5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860). Illustrations to sub-section (1) (a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code (45 of 1860). (b) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code (45 of 1860). (c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code (45 of 1860). (d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code (45 of 1860). A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code (45 of 1860). (e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code (45 of 1860). (f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code (45 of 1860). (g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant

endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code (45 of 1860). (h) A threatens B, C and D at the same time with injury to their persons with Intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code (45 of 1860). The separate charges referred to in Illustrations (a) to (h), respectively, may be tried at the same time. Illustrations to sub-section (3) (i) A wrongfully strikes B with a cane. A may be separately charged with and convicted of, offences under sections 352 and 323 of the Indian Penal Code (45 of 1860). (j) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A 915 and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). (k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code (45 of 1860). (l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with section 466) and 196 of that Code (45 of 1860). Illustration to sub-section (4) (m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code. (45 of 1860.)

SECTION 221. Where it is doubtful what offence has been committed. (1)

If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. (2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under

the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it. Illustrations (a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating. (b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence. (c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

222 SECTION.

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it. (2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. (3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged. (4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied. Illustrations (a) A is charged, under section 407 of the Indian Penal Code (45 of 1860), with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section 406. (b) A is charged, under section 325

of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

SECTION 223. What persons may be charged jointly.

The following persons may be charged and tried together, namely:- (a) persons accused of the same offence committed in the course same transaction ; (b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence ; (c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months; (d) persons accused of different offences committed in the course of the same transaction; (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last-named offence; (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). or either of those sections in respect of 917 stolen property the possession of which has been transferred by one offence; (g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges: Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

. 224. Withdrawal of remaining charges on conviction on one of several charges.

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

SECTIONS 225 to 237 Sessions trial

SECTION . 225. Trial to be conducted by Public Prosecutor.

In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor. **SECTION 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.

SECTION 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.

SECTION. 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 Magistrate, and thereupon the Chief Judicial 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 subsection (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..

SECTION 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.

SECTION . 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.

SECTION 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.

SECTION. 232.Acquittal.

If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defense 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.

SECTION. 233.Entering upon defense.

(1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defense and adduce any evidence he may have in support thereof. (2) If the accused puts in any written statement, the Judge shall file it with the record. (3) 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 such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

SECTION. 234.Arguments.

When the examination of the witnesses (if any) for the defense 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 submissions with regard to such point of law.

SECTION 235. Judgment of acquittal or conviction.

. (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case. (2) 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.

SECTION . 236.Previous conviction. In a case where a previous conviction is charged under the provisions of sub-section (7) of section 211, 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 section 235, take evidence in respect of the alleged previous conviction, and shall record a finding thereon: Provided that no such charge shall be read out by the Judge nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 229 or section 235

SECTION 237.Procedure in cases instituted under section 199(2).

(1) 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. (2) 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. (3) 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 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, Vice-President 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. (4) 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. (5) Compensation awarded under sub-section (4) shall be recovered as if it were a fine imposed by a Magistrate. (6) No person who has been directed to pay compensation under subsection (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. (7) The person who has been ordered under sub-section (4) to pay compensation may appeal from the order, in so far as it relates to the payment of compensation, to the High Court. (8) 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.

SECTION 238 to 250 Trial of warrant cases by magistrate.

A.-Cases instituted on a police report

SECTION 238.Compliance with section 207.

When, in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207.

SECTION 239.When accused shall be discharged.

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing

SECTION 240.Framing of charge.

(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. (2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried. **SECTION .**

241.Conviction on plea of guilty,

the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon

SECTION 242.Evidence for prosecution.

(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241, the Magistrate shall fix a date for the examination of witnesses. (2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing. (3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution: Provided that the Magistrate may 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.

SECTION 243.Evidence for defense.

(1) The accused shall then be called upon to enter upon his defense and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record. (2) If the accused, after he has entered upon his defense, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing: Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defense, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice. (3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

B.-Cases instituted otherwise than on police report

SECTION . 244.Evidence for prosecution.

(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. (2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

SECTION . 245. When accused shall be discharged.

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. (2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for 923 reasons to be recorded by such Magistrate, he considers the charge to be groundless.

SECTION 246. Procedure where accused is not discharged.

(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. (2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defense to make. (3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon. (4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. (5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. (6) The evidence of any remaining witnesses for the prosecution shall next be taken,

and after cross-examination and re-examination (if any), they shall also be discharged.

SECTION 247.Evidence for defense.

The accused shall then be called upon to enter upon his defense and produce his evidence; and the provisions of section 243 shall apply to the case.

C.-Conclusion of trial

SECTION . 248.Acquittal or conviction.

(1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law. (3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon: Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2).

SECTION 249.Absence of complainant.

When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

SECTION 250. Compensation for accusation without reasonable cause.

(1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one ; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid. (2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be 925 paid by such complainant or informant to the accused or to each or any of them. (3) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days. (4) When any person is imprisoned under sub-section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860). shall, so far as may be, apply. (5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him: Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter. (6) A complainant or informant who has been ordered under subsection (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such

Magistrate. (7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided ; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order. (8) The provisions of this section apply to summons-cases as well as to warrant-cases.

TRIAL OF SUMMONS-CASES BY MAGISTRATES.

SECTION 251.Substance of accusation to be stated.

When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or 926 has any defense to make, but it shall not be necessary to frame a formal charge.

SECTION 252.Conviction on plea of guilty.

If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon.

SECTION 253.Conviction on plea of guilty in absence of accused in petty cases.

(1) Where a summons has been issued under section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons. (2) The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as

possible in the words used by the pleader and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.

SECTION 254. Procedure when not convicted.

(1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defense. (2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing. (3) The Magistrate may, before summoning any witness on such application require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

SECTION 255. Acquittal or conviction.

(1) If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal. (2) Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law. 927 (3) A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

SECTION 256. Non-appearance or death of complainant.

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate

shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

Section 257. Withdrawal of complaint.

If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

Section 258. Power to stop proceedings in certain cases..

In any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge..

Section 259. Power of Court to convert summons-cases into warrant-cases.

When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the

trial of warrant-cases and may recall an witness who may have been examined.

SUMMARY TRIALS.

.SECTION 260.Power to try summarily.

(1) Notwithstanding anything contained in this Code- (a) any Chief Judicial Magistrate; (b) any Metropolitan Magistrate ; (c) any Magistrate of the first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences : - (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years; (ii) theft, under section 379, section 380 or section 381 of the India Penal Code (45 of 1860), where the value of the property stolen does no exceed two hundred rupees; (iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed two hundred rupees; (iv) assisting in the concealment or disposal of stolen property under section 414 of the Indian Panel Code (45 of 1860), where the value of such property does not exceed two hundred rupees; (v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860); (vi) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506 of the Indian Penal Code (45 of 1860); (vii) abetment of any of the foregoing offences; (viii) an attempt to commit any of the foregoing offences, when such attempt is an offence; 929 (ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871). (2) When, 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 summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by this Code.

SECTION 261.Summary trial by magistrate of the second class.

The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second class power to try summarily any offence which is

punishable only with fine or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence

SECTION . 262. Procedure for summary trials.

(1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned. (2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter

SECTION . 263. Record in summary trials.

In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely : - (a) the serial number of the case; (b) the date of the commission of the offence; (c) the date of the report or complaint ; (d) the name of the complainant (if any); (e) the name, parentage and residence of the accused; (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause (iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed; (g) the plea of the accused and his examination (if any); (h) the finding; (i) the sentence or other final order the date on which proceedings terminated.

SECTION 264. Judgement in cases tried summarily.

In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

SECTION . 265. Language of record and judgement

(1) Every such record and judgment shall be written in the language of the Court. (2) The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by

means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.