

E Lectures.

9th Semester (Code of Criminal Procedure)

Unit -I:-

Definitions.

Notes on Section 2:-

- Bailable and non bailable offences:-
 - The 1st schedule enshrined in the Code is a ready reference which depicts the section, nature of the offence, whether it is cognizable or non cognizable, bailable or non bailable, and in what court such an offence has to be tried. Bailable offence means an offence which is shown as bailable in the first schedule or which is made bailable by any other law for the time being in force. Thus bailable offence means any offence other than bailable offence. Generally bailable offences are less serious than non bailable offences and in bailable offence bail is granted as a matter of course by the police officer or by the court. Non bailable offence does not mean that bail can in no case be granted. It only means that it can be granted on the discretion of the court.
- Charge:-
 - To make it more understandable we can refer to Reily Vs R₂ (ILR 28 Cal 434(437) in which the charge was defined as “a precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage”. The notes given under section 211 to 217 which relates to the charge be also examined. Thus we

may say that it is a precise formulation of the specific accusations made against a person who is entitled to know its nature at the earliest stage. It consists of a notification to the accused of the offence which he is alleged to have committed and which he is required to plead.

➤ Cognizable offence and case:-

- Cognizable offence means an offence for which a police officer may, in accordance with the 1st schedule or under any other law for the time being in force, arrest without warrant and a cognizable case means a case relating to an offence in which the police officer may, in accordance with the first schedule or under any other law for the time being in force, arrest without warrant. In order to be a cognizable case it is enough if one or more of the offences are cognizable offences.

➤ Complaint:-

- the meaning of the word complaint is common parlance is a grievance. A harmonious reading of the provisions of section 2(d) and 2(r) [ie police report] of the code would indicate that a police report of non cognizable offence after investigation would be deemed to be a complaint and the police officer making such a report be deemed to be complainant (Lajpat Rai Vs State; 1983 Cr L J 888). Thus according to language of 'Municipal Council Vs Prabhu Narain (1969 RLW 24) the complaint means the allegations made to a magistrate with a view to his taking action under law, that a person has committed an offence and a complainant, therefore is the person who makes an allegation in form of a complaint to the magistrate. It must also be noted that as per 'Bhimappa Basappa Vs

Laxman S. Samagounda(AIR 1970 S.C 1155) the word complaint has a wide meaning and includes even an oral allegation. No form is prescribed which the complaint must take. All that is necessary is that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts for the magistrate to take action). Further in order that it may be treated as a complaint it should contain allegations that a person known or unknown has committed an offence and action be taken against him. Therefore an application if it contains the requisite allegations can also be treated as a complaint. We can sum up that the basic ingredients of a complaint are that 1.it must be made to a magistrate,2. It must be made with a view to his taking the action under the code 3. It must contain an allegation that some person whether known or unknown has committed an offence and 4. It must not be the report of a police officer.

➤ Inquiry:-

by the very definition a clear line has been drawn between inquiry and trial, the later not defined by the code and has to be understood with reference to the context in which it occurs. In this regard the Honble Supreme Court has interpreted the word inquiry in VC Shukla Vs State through CBI(AIR 1980 SC 962) in which inquiry and trial have been qualified. As mentioned in 'State of UP Vs Lakshmi Brahman AIR 1983 SC 439) the supreme court has held that from the time the accused appears or is produced before the magistrate with the police report under section 170 and the magistrate proceeds to enquire whether under section 207 has been complied with and then proceeds to commit the accused to the court of sessions, the proceedings before the magistrate would be an enquiry as contemplated by section 2(g).

➤ Investigation:-

It is the duty of a police officer to investigate in a comprehensive manner and thoroughly. Investigations in a cognizable offence by a police officer commences on the information received by an officer in charge of a police station relating to the commission of a cognizable offence or if such officer has reason to suspect the commission of a cognizable offence. As per 'HN Rishbud Vs State of Delhi (AIR 1955 SC 196)', under the code investigation consists generally of the following steps 1. Proceeding on the spot, 2. Ascertainment of the facts and circumstances of the case, 3. discovery and arrest of the suspected offender, 4. Collection of evidence relating to the commission of the offence which may consist of the examination of various persons including the accused and reduction of their statements into writing if the officer thinks fit, the search of the places or seizure of things considered necessary for the investigation and to be produced at the trial and 5. Formation of the opinion as to whether on the material collected there is a case to place the accused before a magistrate for trial and if so taking necessary steps for the same by filing of a charge sheet under sec 173.

➤ Judicial proceedings:-

In earlier definitions by the courts the term judicial proceeding was defined 'nothing more or less than a step taken by the court in the course of the administration of justice, in connection with the pending cases'. In Mayne's criminal law of India we find it to be defined as 'any step in the lawful administration of justice, in which evidence may be legally recorded for the decision of a matter in issue in the case or of any question necessary for the decision or final disposal of such matter'. The judicial proceedings include any proceeding in the course of which evidence is or may be legally taken on oath. The test whether a proceeding is judicial that were approved by the Supreme Court in Bharat Bank Case (AIR 1950 SCR 459) is

following.1. the presentation of the case by each of the parties to the dispute,2. Ascertainment of the facts by the evidence adduced by the parties if the question is purely of facts,3. The submission by the parties of legal arguments to ascertain a question of law and 4.a decision disposing of the matter.

➤ Non cognizable offences and non cognizable offences:-

Non cognizable case means an offence for which a police officer has no authority to arrest without a warrant and non cognizable case means relating to an offence in which a police officer has no authority to arrest without a warrant.

➤ Offence:-

the definition applies to any act or omission punishable by any law for the time being in force. Therefore to constitute an offence there must be a positive allegation that offence has been committed by the person accused of the offence and that such an offence is cause of an act or omission which is made punishable by law. As per 'MLSethi Vs RPKapur AIR 1967 SC 528, an offence is constituted as soon as it is found that the acts which constitute that offence have been committed by the person accused of the offence. It remains an offence whether it is triable by the court or not. If a law prescribes punishment for that offence, the fact that the trial of that offence can only be taken up by courts after certain specified conditions are fulfilled does not make that offence any less an offence'

➤ Police Report:-

As mentioned in Babu Ram Agarwalla Vs State 1976 Cal HN 864, this definition makes it clear that the expression 'Police Report' throughout the code would refer to the final report under sub section 2 of section 173 of the code in cognizable cases and also in non cognizable cases where

the investigation is undertaken under the order of the magistrate under section 155(2) of the code

➤ Public Prosecutor:-

Section 24 of the code has detailed out the provisions regarding the public prosecutors. As we further find mention in the 'State of Rajasthan Vs Pukh Raj 1965 2 CrLJ 677, AIR 1965 Raj 196, public prosecutors are of four categories 1. Appointed by the central government for conduct of any proceedings in the High Court, 2. Appointed by the state government for conducting any proceedings in the High Court, 3. Public and additional public prosecutors appointed by the state government for every district and 4. Special public prosecutors appointed by the central or state government for a particular case or class of cases.

➤ Warrant case and summons case:-

It is the quantum of punishment that distinguishes a warrant case from a summons case. The distinction does not depend upon whether a summons or warrants shall be issues in the first instance. Nor is the question whether the police may or may not arrest without warrant- cognizable or non cognizable, any bearing upon the distinction between summons and warrant case. Chapter XX lays down the distinct procedure to be followed in the trial of summons cases and chapter XIX has the procedure of warrant cases.

Constitution of Criminal Courts:- Section 6 to 31.

Administration of justice is the most important function of the state. For this purpose our constitution has set up a hierarchy of courts. The Supreme Court is the apex body, followed by state High Courts which have been created by the constitution of India, and their jurisdiction and powers are well defined in the constitution itself. Apart from the Supreme Court and High Courts, the criminal courts have been described in the Criminal Procedure Code, 1973. In fact the entire chapter II and III of the code is dedicated to the formation and the powers of the criminal courts and the necessary hierarchy which is indispensable for the logical functioning of the justice delivery system. It is an enabling mechanism that gives the authority for the formation of the courts. Being among one of the 3 foundational pillars of the democracy the scheme was originally laid down by the British. In the present times the essence and co ordinate functioning of the Indian courts has been a cherished features of judiciary and its basic reason the way its courts of justice have been formulated. The language in these sections are self explanatory and notes are given if the elaboration was thought inevitable for additional information.

The word court is attributed and has acquired the meaning of either a place where justice is administered and a person or persons who administer justice. The various commentaries on the subject tell us that 'in order to be a court the person or persons who may be said to constitute it must be entrusted with judicial functions. Judicial function means the function of deciding litigated questions according to law-deciding them not arbitrarily but on evidence and according to certain rules of procedure

which ensure that the person, who is called upon to decide them, acts with fairness and impartiality. Equally true is the fact that a court cannot function properly unless it is armed with certain powers. Thus a court must not only be charged with the judicial functions but also invested with judicial powers. Another aspect of a court is that it exercises jurisdiction over person by reason of sanction of law and not merely by reason of voluntary submission to such jurisdiction. The term criminal court is not defined in the court but the code of criminal procedure, act 25 of 1861 defined it as denoting every judge or magistrate lawfully exercising jurisdiction in criminal cases whether for the decision of such cases in the first instance or an appeal or for commitment to any other court or officer.

A public prosecutor represents the state in whose name the prosecution is conducted. All the offences affect the individual injured as well as the public in general and therefore in all the offences the state is prosecutor. A prosecutor in all practical aspects holds a very critical position in the conduct of a trial. Then we find regarding the public prosecutors in the Sohni's commentary on the code of criminal procedure it has been reported that 'the counsel for the prosecution has not accurately conceived his duty, which is to be an assistant to the court in furtherance of justice, and not to act as counsel for any particular person or party. He should not by statement aggravate the case against the prisoners or keep back a witness, because the evidence may weaken the case for prosecution. His only object should be to aid the court in discovering truth. A public prosecutor should avoid any proceedings likely to intimidate or unduly influence witnesses on either side. There should be on his part no unseemly eagerness for, or grasping at, conviction.

Section 26- as has been mentioned in the preceding notes that the judicial functioning needs judicial powers to be conferred upon the courts so that it can exercise its functions and implement its directions and thus this section is also an enabling provision. This section prescribes the criminal courts by which the offences under the Indian penal code or the other laws are triable. As per the clause a of the section the high court and the sessions court have concurrent jurisdiction to try any offence under the Penal Code. Judicial Magistrates have been conferred jurisdiction to try such offences only as are shown triable by them in the First Schedule. A reference to this schedule would show that there are certain offences under the penal code which are triable exclusively by a court of sessions even though some of them are not punishable with death or imprisonment for life. No magistrate has been vested with the jurisdiction to try any of these offences. The jurisdiction of every criminal court is derived from statute, either from the statute that created the court or one which defines the offence.

Section 28:- sentences are the most important aspect of a trial as it is the final outcome of the trial and most of the time it is essentially attached with public faith in the judiciary and their sense of security and peace. So it has become the foundational feature of the powers as vested in the courts. But at the same time certain guidelines are to be kept in mind while delivering the sentences. As has been laid down in Dulla Vs State AIR 1958 All 198, some guidelines have to be adhered to like a. the twin objects of the punishment are to prevent a person who has committed a crime from repeating it and to prevent others from committing similar crimes. Thus the sentence must aim to achieve both these goals b.the prevalence of a particular crime in a particular area or during a particular period should also be taken into account. One's political, sentimental, or religious conceptions should strictly be disregarded. The court must bear

in mind the necessity of proportion between an offence and the penalty. The maximum penalty provided for any offence is meant for only the worst cases. c. no sentence should ever appear to be vindictive. An excess sentence defeats its own objective and tends to further undermine the respect for the law. d. first/and or youthful offenders invariably be treated leniently. On the other hand a person who has taken to a life of crime or who has refused to take a lesson from his previous convictions should be meted out severe punishment. e. a deterrent sentence is wholly justifiable when the offence is the result of deliberation and pre planning, is committed for the sake of personal gain at the expense of innocent, is a menace to the safety, health or moral well being of the community.

Sections 177 to 189 :- (jurisdiction of the criminal courts in inquires and trials)

Section 177:-

A magistrate within whose local jurisdiction the offence is committed is competent to take cognizance and to try the case. A magistrate has no jurisdiction to take cognizance of a case which has wholly been committed outside his jurisdictional limits. The word 'ordinarily' means except in the cases provided hereinafter to the contrary.

The territorial jurisdiction is a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused and the convenience of the witnesses.

Section 178:-

In the 4 cases as mentioned in the section itself the offences may be tried by a court having jurisdiction over any of such local areas. Local area means a local area to which the code applies. It does not include a local area in foreign country.

In order to attract the provisions of this section it would be necessary for the prosecution to aver that the offence was committed in one or the other local area of which it is uncertain. The section is a specific provision and not a general principle of law. This section is intended to provide for the difficulty that would arise where there is an uncertainty as to in which of the different areas an offence has been committed. The section cannot be invoked where there is no uncertainty as to the local area in which the offence has been committed.

Section 179:-

the section confers jurisdiction on- a) the court within whose jurisdiction anything was done, by the reason of which a person is accused of the commission of the offence and b) the court within whose jurisdiction limits any consequence ensued by reason of which the person is accused of the commission of an offence. The expression 'by the reason of which' governs both the clauses, ie anything which has been done and any consequence which has ensued. If the offence is complete in itself by the reason of the act having been done and the consequence is a mere result of it, not essential for the completion of the offence, this section will not apply.

Section 180:-

The section contemplates two offences, of which one category is designated as 'the first mentioned offence'. The relation between the 'first mentioned offence' and the other offence referred to in the section is a logical relationship, not a chronological sequence. In other words either offence may be anterior in point of time. The principle underlining the section is that the act must be an offence by the reason of its relation to any other act which is also an offence. Where such an act which

is an offence by reason of its relation to any other act which is also an offence is also committed, a charge of 'the first mentioned offence' may be tried by the court within the local limits of whose jurisdiction either act was done. It is the relation of one act with the other which brings this section into operation and gives jurisdiction to the courts in both the local areas where either of them has occurred.

illustration: a charge of receiving or retaining stolen goods may be inquired into or tried either by the court within the local limits of whose jurisdiction the goods were stolen or by any court within the local limits of whose jurisdiction any of them were at the time of dishonestly received or retained.

Section 183:-

The section embodies a sort of legal fiction by which an offence committed during the course of a journey is to be deemed to have been committed within the local limits of certain courts and under certain conditions specified in the section. The underlying object is to provide against the difficulties that might be frequently experienced in locating the exact place of the commission of an offence committed during such journey. The section is not applicable to journey or voyage beyond india.

Section 184:-

This section provides for the trial of the offences by one or more accused when such offences may be tried at one trial. Where there is a combination of several offences against the same accused, or two or more accused are tried for one or more offences, they may be tried or enquired into by any court competent to enquire into or try any of the offences if-

- a) Several offences have been committed by the same accused, they are such that he may be charged with or tried for the same at one trial under section 210, 220 or 221,
- b) If the same offence or offences have been committed by two or more accused and they are such that the accused may be charged with and tried together under section 223.

Section 185:-

Under this section the state government may only direct that any cases or class of cases committed for trial in any district may be tried in any sessions division. The section allows the state government to direct the trial of cases in a place outside the local jurisdiction of the trying court or in a separate portion of the local jurisdiction. But it does not deal with the transfer of cases from one particular court to another.

Section 187:-

The section deals with the case of magistrate having reason to believe that any person within the local limits of his jurisdiction has committed an offence outside such limits he can send the person to the magistrate having jurisdiction to inquire into the offence.

Section 188:-

All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed. So the section 177 lays down the general rule that every offence shall ordinarily be inquired into or tried by a court within the local limits of whose jurisdiction it was committed. This section embodies an exception to that general rule. It provides for extra territorial; jurisdiction of the courts in india in certain cases. This section

merely enacts for uniformity of the trial of the offences committed by an Indian citizen beyond the limits of india for which he has to be tried in india in accordance with any Indian law. the section does not authorize such a trial nor does it specify the offences that are so triable. It merely enacts that, if a person is to be tried for such offences at all, it shall be under the code. It deals with procedure only. Its counterpart in substantive law is to be found in section 3 and 4 of the IPC.

The word 'found' does not mean where a person is discovered but where he actually is present.