CRIMINAL JUSTICE SYSTEM

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CRIMINAL JUSTICE SYSTEM AND ITS OBJECTIVES.

Criminal justice is the delivery of justice to those who have committed crimes. The **criminal justice system** is a series of government agencies and institutions. Goals include the rehabilitation of offenders, preventing other crimes, and moral support for victims. The primary institutions of the criminal justice system are the **police**, **prosecution** and **defence lawyers**, the **courts** and **prisons.**

Criminal justice system in a country **comprises of** the **legislature**, the **enforcement agencies**, the **courts** and the **correctional services**. It has objective to provide protection to life and property of citizens and to ensure order in the society. The chief aim of the system is to ensure that the innocent is acquitted and the guilty are punished; respecting the basic theme of criminal jurisprudence that no offence should go unchecked while no offender should go unpunished.

Crime and Criminal Law.

Citizens of a State are expected to act in accordance with norms and law of that society. A **law is a command** which obliges a person or persons. **Legislation is the source of law** which consists in the declaration of legal rules by a competent authority. Criminal law is a body of such norms which is formally recognized and promulgated by State. **Crime may be defined as the violation of such rules** and regulations; i.e. criminal law; which are enforceable by the State and the society.

It follows that one of the three main kinds of law are the **'Judge-Made Law'**: the other two being, **Statutory Law** (written law made by Parliament) and **Customary Law** (that which acquires force by long-established usage).

Ruling of the Court, i.e. case law as also called judge-made laws are the Court decisions which establish legal precedents which are cited as authority in a later case involving similar facts. A judgment of superior Court which decides a point of law holds ground till it is altered or modified by a subsequent judgment. The decisions of the Supreme Court in so far as they decide questions of law or are based on or enunciate principles of law are binding on all other Courts in Pakistan. This would also give binding authority to the Supreme Court's *obiter dicta* (P.G. Osborn defines obiter dictum in his 'A concise Law dictionary' as "an observation by a Judge on a legal question suggested by a case before him, but not arising in such a manner as to require decision.". Even a decision of the Supreme Court for which no reasons are

given in the order would be binding upon all the Courts in the country.
However, a Court shall not be bound to follow a decision if given ***per incurium***. A decision is *per incurium* when the Court has acted in ignorance of a previous decision of its own or of a Court of coordinate jurisdiction which covers the case before it, or when it has acted in ignorance of a decision of a Superior Court. Besides, a precedent cannot bind a higher Court, and, the Supreme Court binds all the courts and executives except itself for future cases. It has an authoritative force and becomes the law, until and unless rejected or changed by a higher Court.

Elements of crime.
A person cannot ordinarily be guilty of a criminal offence unless two elements; mental and physical; are present. These terms are expressed as ***mens rea*** and ***actus reus***. *Mens rea* implies a guilty mind while *actus reus* denotes the actor criminally liable if combined with *mens rea*. For establishing crime, there should be concurrence of **guilty act** and **guilty mind**.

Adversarial system.
The courts in Pakistan function under adversarial system. This implies that in criminal trials, the Court is only to decide upon the accused being guilty or otherwise of an accused of alleged offence. It is not the job of the court to find out the real culprit if the court is satisfied that the accused being prosecuted before it stands either innocent or not guilty beyond reasonable doubt. During the trial, the Court is assisted by two sides, the prosecution and the defence. Being assisted so; the Court plays a role of a referee or umpire and decide the matter in question in accordance with the law of land.

Age of criminal responsibility in Pakistan.
In Pakistan, minimum age of criminal responsibility is seven years. Provisions of Section 82, Pakistan Penal Code (referred as P.P.C. hereafter), 1860, read with Section 83 of the Code provide that a child *below age of seven years* is incapable of committing offence because he is incapable of forming or possessing necessary *mens rea* for an offence whereas a child *between age of seven and twelve years* can be capable of forming or possessing necessary *mens rea* for an offence, unless it is established that he has not attained maturity of understanding to judge nature and consequences of his conduct.

Components of Criminal Justice System.
In Pakistan, the criminal justice system has a number of components such as **police, prosecution, defence lawyers and courts. Police** are concerned about the need to satisfy public opinion requiring the criminals to be caught, convicted and sentenced, and that, criminality in the society is checked. **Prosecution** is an agency which plays intermediary role between the judiciary and the police. A **Defence counsel** is an

officer of the court and represents the accused; and, has the objective to protect the rights of the accused in accordance with law so that he may not be deprived of the benefit of the law due to his being a layman. **The court** has a duty to supervise the work of the police, prosecutor and the defence lawyer; it determines the guilt or innocence of the accused and imposes sanctions.

Courts and their Hierarchy.

The courts in Pakistan for the purpose of criminal matters are classified in order: The Supreme Court of Pakistan, the High Courts (in each province and in Islamabad) and the Sub-Ordinate Courts (the Court of Sessions with the Sessions Judge, Additional and Assistant Sessions Judges, and, and the Court of Magistrates).

Sentences which Magistrates can pass.

As a general rule (vide Sec. 32, Cr.P.C.), Magistrates of First Class may pass sentences of imprisonment **up to three years including solitary confinement as authorized by law and, or, fine not exceeding forty five thousand rupees and [arsh, daman], whipping** etc.; exception is where Magistrates are empowered under section 30, Cr.P.C. in various parts of the country (not in Sindh) instead of Assistant Sessions Judges and such Magistrates are empowered by their respective Provincial Governments to try all offences not punishable with death and pass sentences as authorized by law except sentence of death and imprisonment for a term not exceeding seven years (Sec. 34, Cr.P.C.).

In default of payment of fine, Magistrate may award the term of imprisonment which shall not exceed one fourth of the term of imprisonment which is the maximum fixed for the offence, in case the offence is punishable with imprisonment as well as fine (Sec.33, Cr.P.C., also see sec. 65, P.P.C.).

Besides, the words used in the section 33, Cr.P.C. for imprisonment in default of payment of fine, "**shall not exceed one fourth"** imply less than; and not exact; one fourth of the maximum punishment Magistrate may be competent to award in a particular offence. Imposition of sentence in default of payment of fine should be commensurate with the substantive sentence given. Thus, where an offence carries two years as maximum punishment and or fine, and the Magistrate award sentence of simple imprisonment for the period of ten days with fine of Rs.50; the scheme law would be defeated if the imprisonment in default of payment of such fine, the offender is awarded to further suffer for six months.

Notably, such imprisonment in default of payment of fine will be in addition to the substantive sentence of imprisonment awarded. Such fine can be tendered at the

prison with the written permission of the Superintendent after adopting proper course described in Rule 47, Pakistan Prison Rules. If a prisoner is sentenced to a fine in addition to a substantive sentence and the order of the Court does not mention any imprisonment in lieu of fine, the prisoner will be released on the expiry of his substantive sentence (Ref. Rule 48, Pakistan Prison Rules).
Exceptionally, there are offences in different statutes and even in P.P.C. such as offence under section 509, P.P.C. where Magistrate is empowered to pass sentences more than provided under section 32, Cr.P.C.

Mechanism / Overview of Criminal Case.
In general parlance, a criminal case in Pakistan has **four stages: pre-investigation stage, investigation stage, inquiry or pre-trial stage and trial stage.** First Information Report sets law in motion. It follows investigation. A report upon completion of investigation is submitted before the court. The court conducts inquiry and decides for the disposal of report if the same is fit for trial or for disposal in some other manner. If the Court deems it fit for trial, it takes cognizance of the offence. Then the trial commences with the framing of charge (reflecting statement of accusations) against the accused and is followed by evidence as per law of land. Upon conclusion of evidence, arguments from both sides are heard. Then the judgment is announced or the decision is given by the judge; the decision culminates into either acquittal or conviction of the accused of such offence. Then there is a provision for direct complaint before the Court and it more or less involves similar trial procedure with difference of inquiry / investigation stage; it will be discussed in separate chapter on "complaint".

PRE-INVESTIGATION STAGE

Criminal Investigation.
Criminal investigation is the name of **collection of evidence** in respect of the crime in question. Its main purpose is to ensure that no one is put on trial unless there is a good case against him.

First Information Report.
First Information Report (referred as FIR hereafter) is a well-known technical description of a report under **section 154, Code of Criminal Procedure, 1898** (referred as Cr.P.C., hereafter) which **gives first information of a cognizable offence**. It is generally made by the complainant or someone on his behalf.
Its objective is to set criminal law into motion, to obtain firsthand information about

commission of any criminal activity and to record the same at earliest before the same is forgotten or embellished, and to provide sound basis for carrying out investigation into right direction.

Any person may set law into motion by making a report with police under section 154, Cr.P.C. If from the facts given by the complainant or the informant, there is *prima facie* commission of a cognizable offence, police are duty bound to record the lodge FIR (Ref. Sec. 154 Cr.P.C.) and there is no requirement to hear the accused named in the complaint at time of registration of FIR.

FIR must be information relating to a cognizable offence, be in writing, be read over to the informant, be signed by the informant and be entered in daily diary and its substance must be entered into a book to be kept in the form prescribed by the Provincial Government. It is registered in Form 24.5(1), prescribed by the Provincial Government, as required under section 154, Cr.P.C. It has name of police station where registered, FIR number, date and time of occurrence of alleged offence, and the substance of criminal activity registered. Besides, it has six columns; (a) date and time when information is reported, (b) name and residence of the informant and complainant, (c) brief description of offence along with section and of property, if carried off, (d) place of occurrence and distance and direction from police station, (e) steps taken regarding investigation, explanation of delay in recording information, and, (f) date and hour of dispatch from police station.
There can be a second FIR but there must be some sound and strong reasons for lodging of second FIR, which should not be a mere amplification of first FIR. Prohibition applies to filing second FIR by same complainant against same accused against whom investigation has already started (Ref. AIR 2013 Supreme Court 3614). The Honourable High Court of Sindh (Sukkur Bench) in Imtiaz Ali versus Province of Sindh through Home Secretary and 8 others vide 2017 MLD 132, had been pleased to observe,

> *"It is well settled that lodgment of second FIR against the same offence is neither prohibited nor restricted by the law, nevertheless, the controverting set of allegations narrated in second FIR must emanate a quite separate and distinct offence, and same should be examined prudently in the purview of facts stated regarding the incident in earlier FIR as well as documentary evidence collected and statements of PWs recorded under section 161, Cr.P.C. by earlier investigating officer, to curb and defeat the fabrication of events with mala fide intention and false involvement of any person."*

Power of Police to Investigate.
Police is under statutory duty under section **154 Cr.P.C**. and have statutory right conferred under section **156(1), Cr.P.C.** to investigate into cognizable offences[1].

In case of investigation into non-cognizable offences, the police by virtue of section **155, Cr.P.C.**, will be required to obtain permission from Magistrate by making an entry into concerned book as per police rules and then to investigate the case; they can neither register a case under section 154, Cr.P.C. nor can they arrest the accused without a warrant. A Magistrate empowered under section 190 Cr.P.C. may order police to investigate into a non-cognizable offence upon report under (Ref. Section 156(3)Cr.P.C.). Once such permission is given, police may carry through the investigation in the same manner as if the offence was cognizable except that the arrest without warrant shall not be made (Ref. Rule 25.11, the Police Rules, 1934).

Optional Investigation.
Section 157(b), Cr.P.C. read with Rule 25.9 of Police Rules, 1934 empowers officer in charge of a police station to **refrain from investigation in unimportant cases**; he is not bound to act on information given. Hence, when investigating staff of a police station upon receiving information of a cognizable offence is already occupied with more important cases, they may defer the investigation. The procedure laid in Rule 25.9, Police Rules, 1934, shall be followed.

INVESTIGATION STAGE

Daily Diaries.
Section 172, Cr.P.C. requires every police officer making an investigation to enter his day by day proceedings in investigation in a diary, setting forth (a) the time at which the information reached him, (b) the time at which he began and closed his investigation, (c) the place or places visited by him, and, (d) a statement of the circumstances ascertained through his investigation.
A criminal court may send for the police diaries of a case under inquiry or a trial before such court. Such diaries may help the Court in the inquiry or trial but such

[1] The Cr.P.C. in column 3 of second schedule classifies offences in two categories: offence in which police may arrest without warrant and offences in which police shall not arrest without warrant. The offences in which police may not require warrant are known as 'cognizable offences' while offences in which police shall need warrant to arrest an accused and will have no authority to arrest him without the warrant are called 'non-cognizable offences'.

cannot be used in evidence. Notably, the accused or their representatives or counsels shall not be entitled to call for the diaries except in the situation where the Court uses such diaries for the purpose of contradicting such police officer; in that situation the provisions of the Qanun e Shahadat, 1984 shall apply.

Arrest of Accused by Police.

"Arrest" is the means through which a person is deprived of his liberty by legal authority. The term 'taken into custody' is generally used to denote 'arrest'. And the term 'custody' is only one of the forms of detention.

Police are clothed with vast powers to arrest a person in the cases of non-bailable offences, bailable offences, and even in matters where they may make preventive arrests.

Chapter V of the Cr.P.C., deals with general powers of arrest of a person. Section 46, Cr.P.C. provides as to how arrest is to be made. Section 54, Cr.P.C. provides for various situations in which a police officer may without warrant. Section 55, Cr.P.C. speaks of arrest of vagabonds etc. Section 57, Cr.P.C. provides for a situation when any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence, refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, such person may be arrested by such officer in order that his name or address may be ascertained. Section 59, Cr.P.C. provides for power and procedure of arrest by private persons.

An impression amongst various quarters that arrest of an accused is a must for purpose of investigation is a misconceived one. **F.I.R. is not a license to arrest.** Lodging of a First Information Report (F.I.R.) or registration of a criminal case does not straightaway require arrest of a person. The scheme of law does not oblige the police to arrest an accused though he may be nominated in F.I.R. or complaint till such time that sufficient evidence to connect the accused with crime becomes available with the Investigating officer, not only this, the police has to satisfy itself that there is no alternative available other than to arrest the suspect. Rule 26.1, Police Rules, 1934 provide that the authority given under section 54, Cr.P.C. for powers of arrest without a warrant, is permissive and not obligatory, and, that Police may arrest a suspect only when escape from justice or inconvenient delay is likely to result from the police failing to arrest. Rule 26.2 of the Rules say that Police shall defer making arrest of a particular person if there is no risk of his absconding, till the investigation is sufficiently complete; and, if any interference with the liberty of the accused person is necessary to prevent him from absconding, and the facts justify arrest, the police shall arrest him and shall not interfere with his liberty unless they arrest him.

The Honourable High Court of Sindh in Abdul Hameed versus Province of Sindh through Home Secretary, Government of Sindh and 7 others vide PLD 2014 Sindh 501, had been pleased to observe,

"The legal position is that it is not necessary that a person is required to be arrested if an FIR is lodged against him for a cognizable offence and investigation is being conducted. Lodging of F.I.R. does not necessarily mean that person nominated in that F.I.R. shall be arrested. It is legal requirement that before arresting a person police must investigate the matter in detail before arresting any person, the police official who intends to arrest any person must satisfy himself that arrest is necessary he must collect evidence first against that person which justifies arrest. One can be arrested only if sufficient evidence exists against him justifying his arrest."

Arrest by Private Person.

By virtue of Sec.59, Cr.P.C., a private person may arrest any person who he believes has committed a **cognizable and non-bailable offence or is a proclaimed offender**. He shall immediately hand over the custody of such person to the nearest police station. If the police officer finds reason to believe that such arrested person falls in the category of section 54, Cr.P.C., he shall re-arrest him.

Arrest by or in Presence of Magistrate.

A Magistrate may himself arrest or order any person to arrest the offender who commits offence in presence of the Magistrate within local limits of his jurisdiction; subject to provisions of bail (Sec. 64, Cr.P.C.); he may also at any time arrest or direct the arrest, in his presence, within local limits of his jurisdiction, any person for whose arrest he is competent at the time and in the circumstances to issue a warrant (Sec. 65, Cr.P.C.).

Production of Accused before Magistrate.

Accused has to be produced before a Magistrate within twenty-four hours under all circumstances of his arrest. If a person arrested or taken into custody is not produced within twenty-four hours before a Magistrate, his custody is deemed to be illegal any without lawful authority. Section 61, Cr.P.C. limits the powers of police with regard to detention of an accused even for one single hour; excluding the time for journey from the place of arrest to the Magistrate; in absence of special order of a Magistrate under section 167, Cr.P.C. The **time of twenty-four hours** for production of accused is to be computed from the time of arrest (by taking the person into custody or by restraining his movement through words) which is apparent from memo of arrest prepared by police at the time of arrest.

Representation by Counsel.

Article 10 of the Constitution of Pakistan, 1973 guarantees the right of representation by a counsel and to have access to relatives, to the accused. When a Magistrate hears application for grant of remand of an accused, he performs judicial

functions and the accused through his counsel, friend or relative may raise an objection to passing an order of remand.

Police Custody Remand[2].

'Remand' denotes sending back a person into custody to secure investigation or trial. If it appears that investigation of a case is not completed within twenty-four hours as stipulated in section 61, Cr.P.C. and the investigating officer is of opinion that the custody of the arrested accused is required for the purpose of investigation, he may seek police custody remand of the accused for **as long as up-to fifteen days** in total (Ref. Sec.167, Cr.P.C.). The objective of remand is recovery of some article or evidence from the accused to establish the case of prosecution; if it is not required, the purpose is defeated and further police custody remand shall not be given. It must be kept in mind that the detention in police custody is generally disfavoured by law.

While granting police custody remand, Magistrates are required to take utmost effort and satisfy themselves that there are reasonable and justifiable grounds for sending the custody back to police. The Magistrate has to see that he can remand an accused to police custody for fifteen days at most yet such provision of 'fifteen days' has not to be used liberally else the objective of the words "from time to time" in the section 167(2), Cr.P.C. shall be shattered; and, hence, he should grant remand as minimum as possible. Each time a Magistrate is requested for remand, he should go through the diaries of the case with reference to its progress and necessity of further remand. If no progress is seen on police file, he should decline the request for police custody remand.

In all cases, no remand can be given after expiry of fifteen days of remand. If an application is moved by police after expiry of fifteen days of remand, such application shall be treated as an application for adjournment under section 344, Cr.P.C.

The Magistrate must give the reasons for sending accused to police custody, in his order; such reasons should be cogent and appealing to ordinary prudent mind. The Magistrate shall forward copy of the remand order to the Sessions Judge concerned who may revise the same, if he finds it improper; this is mandatory requirement under section 167(4), Cr.P.C.

When Accused cannot be produced[3].

The Magistrate shall **not grant police custody remand in absence of accused**. However, when accused is too ill to travel; as is generally seen in cases where accused is injured and is thus hospitalised, and the doctor certifies his inability to move; or when an accused is a woman who has recently given birth to a child, and cannot be taken before a Magistrate without personal suffering or risk to health,

[2] Specimen of order at appendix I

[3] Specimen of order at appendix II

they should not be removed until they are in a proper condition to travel. In such cases, Magistrate may grant sanction for their detention at their homes or in hospital or dispensaries, as the case may be (Ref. Chapter VI, Part A, Federal Capital and Punjab Courts Criminal Circulars). The police shall take all measures to ensure safety of the injured arrested person and Magistrate may be requested to record his statement at the place where he is lying (Ref. Rule 26.25, Police Rules, 1934).

Remand in Sessions Trial.

A Magistrate is empowered to grant remand in a case triable by Court of Sessions. It is so because he applies his mind as to whether the case should be sent up to the Court of Sessions, it may be termed as inquiry and he may postpone such inquiry under section 344, Cr.P.C.

Remand of person already in Judicial Custody.

Ordinarily, an accused once sent to judicial custody cannot be remanded to police custody. However, if a remand of such accused who is in judicial custody is required for purpose of investigation in some other case, police may obtain permission[4] from the Magistrate who sent him to jail for his production before the Magistrate from whom remand is required to be requested.

Successive Remands.

Once a person is sent to judicial custody, he cannot be handed over to police subsequently and successive remands cannot be given in different cases. However, if the cases are registered at different places or different police stations, remand can be given after completion of necessary formalities which are mandatory in nature. There is no bar in the provisions as obtained in Ss. 167 & 344 Code of Criminal Procedure (V of 1898), the custody of the accused cannot be handed over to police if he is required for the purpose of investigation in a case different from one in which he had already been sent to judicial custody.

Remand in Bailable Offences[5].

Offences which fall in category of 'bailable' in accordance with statutory law are not open to remand. **Accused cannot be remanded to police custody in bailable offences.** He may also be not sent to judicial custody except in one condition where he is unable to furnish solvent surety to the satisfaction of the Court. In appropriate cases, he may be released on Personal Recognizance (referred to PR hereafter) bond.

Remand of Women[6].

The section 167(5), Cr.P.C. provides that a woman cannot be remanded to police

[4] Specimen of order at Appendix III
[5] Specimen of order at Appendix IV
[6] Specimen of order at Appendix IV

custody **except when she is involved in cases of qatal or dacoity**. In other non bailable offences, she has to be sent to judicial custody; subject to provisions of bail; and, investigating officer may, if needed, interrogate her in prison and that too, in presence of an officer of jail and a lady police officer.

Remand of Juveniles[7].

The Sec. 9(5) of the juvenile justice system ordinance, 2000 provides that when a child under **fifteen years of age** is arrested or detained for an offence which is punishable for **less than ten years**, he shall be treated as if he were accused of commission of a bailable offence. And in cases, where he has not to be released on bail, he may not be given to police custody.

Judicial Custody[8].

In cases, where a Magistrate thinks the case is not fit for remanding accused to police custody and so also, the accused is not to be discharged or released on bail, he shall send the accused to judicial custody in light to provision laid down under **section 344, Cr.P.C**. For this purpose, as well, the presence of accused before the Magistrate while passing such order, is a must.

Transit Remand[9].

There comes a situation where A is required to be produced before a Court in an offence committed in Lahore while he is arrested in Karachi. The police arresting the accused produce A before the nearest Magistrate in Karachi within twenty-four hours. The Magistrate then has to grant transit police custody remand. Such remand would be for the purpose of production to the Magistrate having jurisdiction in Lahore. The provision for transit remand is found in provision laid down **under sections 85 read with 86, Cr.P.C.**

Discharge of Accused[10].

Section 63 read with 167, Cr.P.C. empowers a Magistrate to make a special order for discharging an arrested person by way of bail or bond if it is found that such person was arrested without justification. It is settled proposition of law that mere lodging of FIR does not make a person accused in strict parameters of the criminal law until and unless some tangible evidence connecting the person with the alleged offence is available on record. In absence of such tangible evidence, Magistrate before whom accused is produced at time of remand, can effectively grant relief to such person by passing order under section 63, Cr.P.C. The said provision comes into operation **when it is found that the person is arrested or detained without sufficient cause**.

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[7] Specimen of order at Appendix VI
[8] Specimen of order at Appendix VII
[9] Specimen of order at Appendix VIII
[10] Specimen of order at Appendix IX

The police cannot re-arrest a person discharged by Magistrate under the provision without orders of the Magistrate. Besides, order of discharge is not order of acquittal and the person discharged shall not smother investigation and shall be required to cooperate in investigation until final report is submitted.

Search of documents or things or house.

In matters where officer in charge of a police station or a Court deems that production of a certain document or other thing is necessary for the purpose of such investigation, inquiry or trial, the officer in their case may issue a written order, or the Court, in their case may issue a summons subject to conditions laid down in sec. 94, Cr.P.C., to the person in whose possession or power such document or thing is believed to be, directing him to attend and produce such thing at the time and place set accordingly. If the Court believes that such person addressed would not comply the attendance and production order, the Court may issue search warrant under section 96, Cr.P.C.

A Magistrate may issue search warrant directed to a police officer above the rank of a constable for search of a house, if upon information or inquiry, he has reason to believe that such place is used for the deposit or sale of stolen property; subject to provisions laid down under section 98, Cr.P.C.

Such searches shall be made by police officer directed in presence of two or more respectable inhabitants of the locality as witnesses and the proceedings shall be reduced to writing, in light of section 103, Cr.P.C.

Search of persons wrongfully confined (Sec. 100, Cr.P.C.).

A Magistrate is empowered to issue search warrant for recovery of a person he believes to be wrongfully confined and such confinement amounts to an offence. If the person to whom such warrant is directed finds the wrongfully confined person for whom such warrant is intended, he shall immediately take the person to the Magistrate for appropriate orders.

Recording of statements by Police.

Section 160, Cr.P.C. empowers a police officer to require attendance before himself of any person within the limits of his own or adjoining police station, who appears to be acquainted with the circumstances of a particular case. The notice of such summoning should be in writing. Section 161, Cr.P.C. further empowers any investigating officer to examine any person who appears to be acquainted with the facts and circumstances of a particular case, and such recording of statements shall be reduced to writing but shall not be signed by the person giving statement. The person required by investigating officer shall be bound to answer all such questions excepting those which may expose the person to a criminal charge or to a penalty or forfeiture. The statements can be used for contradicting a witness or persons giving such statements as indicated in Article 140, Qanun e Shahadat, 1984.

Recording of statements of witnesses by Magistrate[11].

Section 164, Cr.P.C., empowers a Magistrate to record statements of witnesses during course of investigation. **Any such statement** may be recorded in the presence of the accused and the accused shall be given an opportunity to cross-examine the witness making the statement; it is not necessary that the Magistrate receiving or recording confessional statement should be a Magistrate having jurisdiction in the case. The statement shall contain a certificate to the effect at the end of the statement and more so over, as a matter of caution, the Magistrates should **affix the copy of CNIC or the photograph of the witness making statement** with the statement. The statement shall **be signed by the Magistrate and the witness giving statement**. Statement of witness can be recorded by Magistrate at **instance of police, at the request of the complainant, accused, aggrieved person, or the witness himself**; such powers are discretionary in nature and Magistrate may, *prima facie,* find that some *mala fide* was behind seeking such permission, he is under no obligation to record the same (Ref. 2009 MLD 421). It is recorded by way of precaution so that if the witness is won over and does not support of case of prosecution at the time of trial, he could be confronted with this statement u/s 164, Cr.P.C. after he is declared hostile. The other situation can be where the witness is dead or cannot be found at the time of evidence, his statement may be available. In ordinary course, the statement under section 164, Cr.P.C. may not be recorded of the complainant yet it can be recorded if further statement is needed (Ref. 1993 SCMR 550).

Since a Magistrate recording statement or confession under section 164 Cr.P.C., such Magistrate becomes a witness to the case and therefore, he may not try the case. In given situation, it may be appropriate that applications for such statements may be referred to District & Session Judge who may direct for such statements to be recorded by some other competent Magistrate; this may prevent the trial Magistrates form referring such cases for transfer to other courts on that score.

Recording of confessions by Magistrate[12].

The term 'confession' has not been defined in the Qanun-e- Shahadat, 1984. It is an admission of certain facts by a person which constitute commission of an offence. It is a voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offence charged, and discloses the circumstances of the act or the share and participation which he had in it (Black, Henry Campbell, M.A. Black's Law Dictionary, 296 (Sixth Edition).

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[11] Specimen of statement at Appendix X

[12] Specimen of statement at Appendix X

Section 164, Cr.P.C., empowers a Magistrate to record confessions of accused, as confessions before police are inadmissible under Articles 38 and 39 of the Qanun e Shahadat, 1984. A mandatory requirement is that actual words used by the person making confession must be reproduced so as to prove the confessional statement, and that confessions shall not be recorded on oath. A statement of maker of confession becomes the confession only if it is recorded in compliance of the provisions laid down Sections 164 and 364 of Cr.P.C. The law of confession has been embodied in the Articles 37 to 43 of the Qanun-e-Shahadat, 1984, and, the mode of recording judicial confession is governed by Sections 164, 364 and 533 of Cr.P.C. It can be recorded before the commencement of trial (framing of charge).

Judicial Confession and Voluntariness.

The essential features / principles governing significance of voluntariness in recording judicial confession are as follows,

(i) Before recording any such confession, the Magistrate shall explain to the person making it that he is not bound to make a confession and, that if he does so it may be used in evidence against him. Fear of the accused must be removed.

(ii) No Magistrate shall record any confession unless upon questioning the person making it, he has reason to believe that it was made voluntarily; failure to question has been held to vitiate the confession.

Formalities to be observed for recording Judicial Confession.

In recording confession, and when accused is brought before the Court for the said purpose, following formalities have to be observed by a Magistrate:

(i) He should **remove the accused from the custody** of the police who bring him for the purpose.

(ii) He should get **removed the handcuffs** of the accused, if he is in handcuffs.

(iii) He should satisfy himself that no policeman concerned with investigation of the relevant case, is present in the Court or the place where proceeding could be heard or seen.

(iv) He should inform the accused that he is no longer in police custody and, that he is appearing before a Magistrate who has no concern with the police.

(v) He should explain to the accused that he is not bound to make a confession and, if he does so, it will be taken down in writing and may be thereafter used as evidence against him.

(vi) He should then give at least one to two-hour time to the accused for reflection; and, during this time, the investigating police shall not be allowed to have access to him.

(vii) In order to satisfy himself as to whether the confession is voluntarily made or not, the Magistrate **must put following questions to the accused**, prior to recording of such confession;

(a) Hereafter, you will not be kept in the custody of police, do you understand?
(b) Even if you refuse to make a statement you will not be kept in police custody, have you understood this?
(c) When were you arrested and since when are you in the custody of police?
(d) Have the police or any other person threatened you to make a statement?
(e) Have the police or any other person given you any allurement or inducement to make statement?
(f) When did it first occur to you that you should make a confession and why did it occur to you?
(g) Why are you making a confession?
(h) Are you willing to make a statement voluntarily and of your own free will?
(i) The memorandum set forth in section 164(3) of Code of Criminal Procedure (V of 1898) must be appended at the foot of the record of the confession.

Mode of recording Judicial Confession.

Confessional statement of an accused is recorded under section 164 Code of Criminal Procedure (V of 1898). The law embodied in this section requires that a Magistrate, before recording any such confession, should explain to the person making it that he is not bound to make a confession and that if he does so it may be used against him. Accused should also be informed and explained before recording of confessional statement that whether or not he made the confession his custody would not be handed over to the police which had brought him there (Ref. 2016 P.Cr.L.J. 1608); and, he must then be sent to judicial custody as no police custody remand can be given any further. The Magistrate should make sure that the confession is voluntarily made. Besides, he shall make a memorandum of such record to the following effect,

> *"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains full and true account of the statement made by him.*
>
> (Signed) A.B.,
> Magistrate "

Section 364 of Code of Criminal Procedure (V of 1898) lays down the mode of examination of accused. Since the recording of a confessional statement of an accused is also an examination of the accused, the provisions of this section will apply to the recording of the confession of the accused. The provisions of this section provide that,

(i) The whole examination of the accused shall be recorded by Magistrate or Judge in full in the language in which he is examined or if that is not practicable, in the language of the Court or in English.

(ii) Such record shall be shown or read over to the accused and if he does not understand in the language it is written, it shall be interpreted to him accordingly.

(iii) If the examination is not recorded by the Magistrate or Judge himself, he shall be bound to make a memorandum thereof. And if he is unable to make such memorandum, he shall record the reason of such inability. The section does not require that the memorandum should be written by the Magistrate himself in his own hand. It is enough if it is signed by him.

(iv) If a person is willing to make a voluntary statement under section 164 Code of Criminal Procedure (V of 1898) before a Magistrate, the Magistrate has no jurisdiction to refuse the same.

Non-compliance of provisions under 164 read with 364, Cr.P.C.

Where the provisions of the sections 164 and 364 Code of Cr.P.C. have not duly been complied with while recording a confession or statement under section 164 Cr.P.C., the statutory provision of Section 533, Cr.P.C. gets attracted; according to which, any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded, and, such statement shall be admitted if the error has not injured the accused as to his defence on the merits. The Section provides a mode for the rectification of an error arising from non-compliance with any of the provisions of S. 164 or S. 364. The object is to prevent justice being frustrated by reasons of such non-compliance.

Identification Parade[13].

There is no express provision providing for conducting test of identification parade in Code of Criminal Procedure or the Qanun-e-Shahadat Order. However, it derives its inference from **Article 22** of the Qanun-e-Shahadat, 1984.

Identification test can be conducted of both an accused and some property. The difference between the two is that in the case of the former, the identification is of one stranger by another, in the case of the latter, it is invariably by the owner or by those who had been familiar with it prior to the crime, such as stolen property. For the purpose of this chapter, the purview is restricted to the test for identification of accused. Magistrates, in general, are confronted with identification parade of persons applications, so, this would be more significant to discuss herein.

[13] Specimen of memo at Appendix XIII

The term "identification" means proving that a person, subject or article before the Court is the very same that he or it is alleged or charged to be. It is often a matter of opinion or belief. As far as identification test in a criminal offence is concerned, it has two-fold objectives;

(a) To satisfy that the investigating authorities, before sending the case for trial to Court, that the person arrested but not previously known to the witness is one of those who committed the crime; and,
(b) To satisfy the Court, that the accused is the real offender and is genuinely connected with the crime, alleged.

Identification Parade, when necessary.
Identification parade becomes essential and inevitable only when a witness gets a momentary glimpse of the accused and he claims that he would be able to identify the accused. It is not necessary for State to hold identification parade when accused were arrested at the spot of the crime.

Essentials of Identification Parade test.
In order to ensure that identification parade is conducted fairly, it becomes the duty of the prosecution to adopt such measures so that identifying witness cannot see the accused after commission of crime till the identification parade is held immediately after the arrest of accused persons as early as possible. If role of accused is not described by the witness at identification parade, such type of identification will lose its value and could not be relied upon, if prosecution witnesses had seen the accused before identification parade. Absence of complete description of dummies at the test of identification parade, without their address, their occupation and without any clue, whether they were fellow prisoners or outsiders, admitted dissimilarity in height, physique, features, complexion, appearance and dress of dummies and accused persons, would render such exercise always open to serious doubts.

Identification Parade test – Precautions and Guidelines.
Rules 26.7 and 26.32 of Police Rules, 1934 and chapter V-C of the Federal Capital and Punjab Courts Criminal Circulars contain relevant provisions. Precisely, following guidelines should be observed prior to conducting identification parade:

(a) The identification parade should be conducted in presence of a Magistrate and two respectable witnesses having no interest in the case. Arrangements should be made to ensure that the identifying witnesses is kept separate from each other at such a distance from the place of identification so that it shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings until they are called up to make their identification. The identification should be carried out as soon as possible/without any delay after the arrest of the suspect. The suspect

should be placed among other persons similarly dressed and of the same religion and social status. They should be of similar height, built, structure and colour. The proportion of dummies mixed with the under-trials shall be eight or nine to one. Each witness should be brought up separately to attempt the identification. Care should be taken so that the remaining witnesses are still kept out of sight and hearing and that no opportunity be permitted for communication to pass between witnesses who have been called up and those remain to be called or not been called. At the close of test, the Magistrate and other independent witness/witnesses should sign the form of recording of test and certify that the test has been carried out correctly and that no collusion between the police or witnesses or among the witnesses was possible. It is advisable, that whenever possible, an independent reliable person unconnected with the police should be present throughout the proceedings at the place where the witnesses are kept and should be required to devote his attention entirely to the prevention of collusion. It is important that once the arrangements for the proceedings have been undertaken, the Officer, investigating the case and any Police Officer assisting him in the investigation, should have no access whatsoever either to suspect or the witnesses.

(b) The Magistrate, supervising the identification proceedings, must verify the period, if any for which the accused persons have remained in police custody after their arrest and before the test identification and must incorporate this fact in his report about the proceedings.

(c) If there are more accused persons than one who have to be subjected to test identification; then the rule of prudence laid down by the Superior Court is that separate identification parade should ordinarily be held in respect of each accused person.

(d) The Magistrate is obliged to prepare a list of all the persons (dummies) who form part of the line-up at the parade along with their parentage, occupation and addresses.

(e) The Magistrate must faithfully record all the objections and statements, if any, made either by the accused persons or by the identifying witnesses before, during or after the proceedings.

(f) Where a witness correctly identifies an accused person, the Magistrate must ask the witness about the connection in which the witness has identified that person i.e. as a friend, as a foe or as a culprit of an offence etc., and then incorporate this statement in his report.

(g) And where a witness identifies a person wrongly, the Magistrate must so record in his report and should also state the number of persons wrongly picked by the witness.

(h) The Magistrate is required to record in his report all the precautions taken by him for a fair conduct of the proceedings; and,

(i) The Magistrate has to give a certificate at the end of his report.

Bail.
The topic of bail is not essentially pertaining to investigation stage only. Bail application can be moved at any stage of criminal proceedings: at time of investigation or inquiry or trial. But since it can be moved even in initial stages, the topic is dealt with in this chapter.

Bail defined.
The Criminal Procedure Code or any statutory law do not define the word, 'bail'. In simple terms, it involves the **release of a person who is formally or legally under arrest and in custody**. In legal parlance, it entails releasing of a person from the custody of police and **delivering him into the hands of sureties**, who undertake to produce him before the Court as and when he is required by the Court. The philosophy behind the concept is the widely celebrated principle professing that an accused person must be presumed to be innocent until and unless proven guilty; and so also, the legal anomaly that in case an under trial prisoner is ultimately found innocent and is acquitted, no compensation whatsoever can be offered to him either by the State or by the society for the period for which he unnecessarily remained in jail and during which he suffered all agony, and physical and mental torture there.

Bail by police or by Magistrate.
Police and Magistrate have parallel powers for admitting an accused on bail, in Cr.P.C. The difference is that police bail in non-bailable offences comes to an end with the conclusion of investigation excepting in cases of bailable offences, the police secure securities from the accused for appearance before Magistrate on a day fixed or from day to day until otherwise directed.

Bail in Bailable Offences[14]
The second Schedule of Cr.P.C. divides offences in bailable and non bailable. Section 496, Cr.P.C. deals with bailable offences and provides that accused shall be released against surety determined by Court on bail in bailable offences when he is arrested or detained by police. Bail cannot be refused by Court in such offences.

Bail in Non-Bailable Offences[15].
Section 497, Cr.P.C. deals with non-bailable offences. As a general rule, the Court shall release a person accused of non bailable offence and who is in police custody. There are three exceptions to this rule in which court should not ordinarily admit accused to bail; where the Court has reasons to believe that the accused is guilty of offence punishable with death or life imprisonment or imprisonment for ten years.

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[14] Specimen order at Appendix XIV

[15] Specimen order at Appendix XV

Then the provision also provides for **bail if the accused is under sixteen years of age, or is a woman, or is sick or infirm.**

Statutory Bail[16].
Where the Court believes that **the trial of an accused has been delayed not due to default of accused in any manner whatsoever**, it shall admit the accused to bail (a) if the accused is being tried for an offence **not punishable with death** and has been detained in prison for a period of **exceeding one year** (in case of **male** accused) or **six months** (in case of **female** accused) and the trial has not been concluded, and, (b) if the accused is being tried for an offence **punishable with death** and has been detained in prison for a period of **exceeding two years** (in case of **male** accused) or **one year** (in case of **female** accused) and the trial has not been concluded. The provision shall not apply where the accused is a previous convict for an offence punishable with death or life imprisonment or is a hardened or dangerous criminal or is accused of terrorist act punishable with death or life imprisonment. [Sec. 497, Cr.P.C].

Case of Further Inquiry[17].
In non-bailable offences, the Court may admit the accused to bail at any stage of the case if it comes to believe that there are reasonable and sufficient grounds for further inquiry into guilt of the accused (Sec. 497(2), Cr.P.C.). The cases of further inquiry may include **enmity** between the parties, role attributed and then **contradicted** of the accused during investigation, **ocular evidence** not being supported by **medical evidence**, **no recovery** from the accused, and **absence** of accused from place of crime at time of commission of offence.

Pre-Arrest Bail.
Law of anticipatory bail in Pakistan is not a statutory law. It seeks its inference from **Sec. 498, Cr.P.C.** (Ref. PLD 1972 Lahore 722). The provision empowers High Court and the Court of Sessions to grant this extra ordinary relief to the accused in extra ordinary and exceptional circumstances such as where Court comes to belief that perhaps accused was falsely implicated in a case and he was likely to suffer irreparable injury to his dignity, honour or reputation by his arrest.

Surrender before Magistrate for Bail.
A practice is being observed that an accused allegedly involved in some bailable offence surrenders himself before a Magistrate and procures bail from his Court. It is generally perceived that Magistrates seek sanction for such grant from the word

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[16] Specimen order at Appendix XVI

[17] Specimen order at Appendix XVII

"appears" used in Section 496, Cr.P.C. and 497(1) of the Code permits an accused person to appear before a Magistrate, even before his physical arrest and after surrendering himself to the "judicial custody" of the Court, to seek bail under section 497 or 498 Cr.P.C., as the case may be. It is anti-thesis of the basic concept of post arrest bail which is to release a person from the custody of police and deliver him into the hands of sureties; while it is crystal clear from the scheme of law that a **Magistrate is not competent to grant Bail Before Arrest**.

In *State versus Mohammad Ayoob* vide PLD 2008 Karachi 492, the Honourable High Court of Sindh was pleased to observe that Magistrate cannot grant bail unless the matter falls under one of the following categories viz.

(1) if the person seeking bail has been placed under actual custody, or
(2) he appears in answer to the process issued by the Court, or
(3) he is brought before the Court by the police or some other arresting authority.

Protective Bail.

Protective bail is granted to accused to enable him to approach the concerned Court of other provinces for the purpose of obtaining pre-arrest bail. It is granted without touching merits of the case. It can be entertained by High Court direct when accused had political background, without approaching Sessions Court. Sessions Court has no jurisdiction to grant interim pre-arrest bail or protective bail to the accused of an offence registered through F.I.R., outside the District where it is situated because the jurisdiction of Sessions Court is limited to his District only and not outside it.

Subsequent Bail[18].

Second or subsequent bail application should be heard and dealt with by the same Judge; the rule applies in cases when the other accused of the same case or even cross-case files bail application. It shall be the duty of the counsel to mention in a bail application filed by him fact of having filed an earlier application also stating result thereof.

Further, unless second bail application after rejection of first application was made **on grounds other than those available at the time of first bail application**, matter should not be opened up for reconsideration.

Surety.

Once the Court admits an accused to bail, there should not be needless impediment in his release from custody at hands of surety person. He should be released on such moderate surety as may be suitable for his appearance before the Court. Magistrates should be careful in fixing sureties since the object of calling upon an accused top

[18] Specimen order at Appendix XVI

furnish solvent surety is not to penalize him but to ensure his presence before Trial Court. Accused of bailable offences and preventive offences, at the discretion of Court, could be released on execution of P.R (Personal Recognizance) bond without surety in appropriate cases for their appearance before the Court.
Law provides that **surety should not be excessive**. In cases where it is excessive, the High Court or the Sessions courts are empowered to reduce the surety as per circumstances (Sec.498, Cr.P.C.).

Bonds and their Forfeiture[19].
When a bond stands forfeited or a surety dies or becomes insolvent, the procedure to be followed is given in Section 514, Cr.P.C. A minor is not competent to execute abound, a surety or the sureties, may be allowed under Section 541-B, Cr.P.C. to execute the required bound. All orders passed under Section 514, Cr.P.C. by a Magistrate may be appealed against to the Sessions Judge under Section 515, Cr.P.C.

Grounds for refusing Bail[20].
In exceptional circumstances, bail of an accused may be declined by the Court keeping in view the theme that each case has to be decided on its own merits and deeper appreciation of evidence is not required at bail stage. The extra ordinary and exceptional circumstances may include, (**a) Where there is likelihood of absconding of accused, (b) Where there is apprehension of the accused tempering with the prosecution evidence, (c) Where there is danger of the offence being repeated if the accused is released on bail; and, (d) Where the accused is a previous convict.** (PLD 1995 SC 34).

Cancellation Bail.
A High Court or Court of Sessions or a Court which has released an accused on bail for a non-bailable offence, may order his arrest and remand in custody (Sec. 497(5), Cr.P.C). Such act shall be subject to circumstances where for instance, there is apprehension that he may abscond or that he has breached the terms of his bail or has committed other offences like interfering with witnesses or the administration of justice.

Requirements upon hearing of Bail.
Law does not require or press for an application for bail in black and white yet it is established practice that an application in writing is filed on behalf of the accused to seek bail. The necessary requirement warranted by law (Sec. 497, Cr.P.C.) in non-bailable offences is that the prosecution should be given notice to show cause why the accused should not be released on bail. So, Magistrates should properly notice the application to the prosecution and hear both sides; the defence counsel and the

[19] Specimen order at Appendix XIX
[20] Specimen order at Appendix XX

prosecutor; and then, pass proper order showing reasons for the order they pass.

INQUIRY / PRE-TRIAL STAGE

Inquiry or Pre-trial stage comes in between stages of completion of investigation and commencement of trial by Court, in a criminal case. It entails all proceedings from upon submission of police report under section 173, Cr.P.C. till framing of charge of accused in a criminal case.

Challan or Police Report.

The word "challan" does not figure anywhere in the Cr.P.C., however, it has been referred to as such in Police Rules. The Cr.P.C. refers to the term "Police Report" in Section 173. A challan or a final report of investigation under S.173, Cr.P.C. are one and the same thing according to the scheme of things in Cr.P.C. Whatever may be the finding of Investigation Agency about the innocence or otherwise of the accused, the same is to be produced before the Criminal Court by preparing or filing report under S.173. Cr.P.C.

Report of Police Officer (Sec. 173, Cr.P.C).

Law provides that every investigation has to be completed without unnecessary delay and as soon as it is completed, the officer in charge of a police station shall through public prosecutor forward a report to the Magistrate having jurisdiction to take cognizance of offence on such report; the report should be in a form prescribed by Provincial Government and should show the names of the parties, the nature of the information, the names of witnesses (persons acquainted with the circumstances of the case), and the fact as to if the accused has been forwarded in custody or has been released on his bond (if so, whether with or without sureties).

The investigation should be completed within **fourteen days** from the date of F.I.R. and if it does not happen so, an interim report showing investigation till then, be submitted within three days after then. The Court may commence the trial on basis of such interim report or may record reasons if it desires that the trial should not be commenced by then. The Investigating officer may continue investigation and submit collection of new evidence before the Court which may be considered by the same as one of relevant factors to decide the matter.

The police officer along with the report shall produce witnesses, except the public servants, and Magistrate shall bind such witnesses or appearance before him or any other court as the case may be, on date of trial.

Duties of an Investigating Officer & Magistrate.

Investigation Officer is required to collect relevant evidence in a criminal case and to submit the report and the collected evidence / material before the concerned Magistrate; nothing else. He is not obliged to render any opinion regarding guilt or innocence of an accused person.

It is the job of a Magistrate to decide whether the material placed is sufficient to take cognizance or otherwise, to summon any person to face a trial or not and to frame a charge against a person or not; or if he may deem fit, he may cancel the case.
A Magistrate may agree or disagree with the findings and conclusion of police report; he may apply independent mind and form his own opinion. Though a Magistrate is not bound by police report yet at the same time, he cannot order Investigating Officer to submit challan with specific directions. The three preconditions to act fairly, justly and honestly cast a duty on the Magistrate to apply his mind to the material placed before him and after duly considering the pros and cons of the matter, pass a speaking and well-reasoned order.

Final report when Accused are not sent up for trial (Summary Report).
Final report of all cases wherein, no accused is sent up for trial, is submitted in the form No. 25.57(2) prescribed by the Provincial Government. The form has eight columns;

(a) Column No. 1: Name, address and occupation of the complainant or informant;
(b) Column No. 2: Nature of charge or complaint;
(c) Column No. 3: Description of property stolen, if any;
(d) Column No. 4: Name and address of accused persons, if any;
(e) Column No. 5: If arrested, date and hour of arrest; Column No. 6: Date and hour of release and whether on bail or recognizance;
(f) Column No. 7: Property (including weapons) found with particulars of when, where and by whom found and whether forwarded to Magistrate; and,
(g) Column No. 8: Brief description of information or complaint, action taken by police with result and reason for not proceeding further with investigation.

"A", "B" and "C" class[21].
Classes "A", "B" or "C" are in practice to dispose of criminal cases after completion of investigation. Although there is no procedural law by which a Magistrate could grant administrative approval for disposal of a case under "A", "B" or "C" class, but such continuous practice had become usage, which has the force of law and is a part and parcel of the procedural law. Disposal of the case under any of the classes is an administrative order while taking cognizance of a case is a judicial act, which cannot be nullified by an administrative act. The administrative order passed by the Magistrate can be challenged under section 561-A Cr.P.C. by involving inherent jurisdiction of the Honourable High Court, while such type of judicial order can be challenged under revisional jurisdiction before the competent forum.
Magistrate may dispose of report for disposal of case by police under **'A' clause when the case is true but accused remains untraceable; under 'B' clause, the matter**

[21] Specimen orders at Appendix XXI, XXII, & XXIII

should be found to be false, and under 'C' clause where there is insufficient evidence or matter was non-cognizable; needless to reemphasize that finding of police upon conclusion of investigation is not binding upon court. It is stressed that since an order of disposal in "B" class is adverse to the complainant in nature and may subsequently result in initiation of legal proceedings against him, such order should not be made without prior to issuing of show-cause to the complainant and proper hearing of him.

Magistrate may refuse the recommendations of police and take cognizance, even. The Honourable High Court of Sindh (Sukkur Bench) in Imtiaz Ali versus Province of Sindh through Home Secretary and 8 others vide 2017 MLD 132, had been pleased to observe,

> *"It is well settled that Magistrate while dealing with summary report submitted by the Investigating Officer is entirely competent under section 173, Cr.P.C. and Rule 24.7 of Police Rules, 1934, to accord or discord the summary report considering the facts and circumstances of the incident prudently to maintain the ends of justice and curb the abuse of process of the Court."*

Essentials of Challan when accused are sent up for trial.

The police report under section 173 of the Code constitutes the charge sheet and is commonly known as 'challan': a term not known to the Code but having mention in the Police Rules. The said report has to be on a form (No. 25.56(1)) prescribed by the Provincial Government. The form has seven columns;

(a) Column No. 1: Name, address and occupation of the complainant or informant;
(b) Column No. 2: Name of the persons not been sent up for trial whether arrested or not arrested including absconders (absconders showed in red ink).
(c) Column No. 3: Names of the accused who have been sent up for trial and are in custody;
(d) Column No. 4: Name of persons who have been sent up for trial but are on bail;
(e) Column No.5: Details of the property (including weapons) recovered during investigation;
(f) Column No. 6: Names and addresses of the prosecution witnesses;
(g) Column No. 7: A statement of the facts of the case along with the opinion of the Investigation Officer and the offences which in the opinion of the Investigation Officer have been committed.

Cognizance by Court[22].

The Cr.P.C. vide Section 190 provides for cognizance of offences by a magistrate when he is empowered to take it of any offence either (a) upon receiving a complaint

[22] Specimen order at Appendix XXIV

of facts which constitute such offence; or (b) upon a report in writing of such facts made by any police-officer; or (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) A Magistrate taking cognizance under sub-section (1) of an offence triable exclusively by a Court of Session shall, without recording any evidence send the case to the Court of Session for trial.

Court of Session is debarred under Section 193 Cr.P.C from taking cognizance of the case as a Court of original jurisdiction unless the case is sent to it by a Magistrate under section 190(3) Cr.P.C. whereas a special Court constituted otherwise than in the Cr.P.C. can take cognizance of the case directly as a Court of original jurisdiction in the same manner as a Magistrate is empowered to take cognizance of a case under Section 190 of the Code. For instance, The Anti-Terrorism Court may directly take cognizance of a case triable by such Court without the case being sent to it under section 190 of the Code.

Once Trial Court has taken cognizance, the Court cannot cancel the case. Court taking cognizance of an offence has to consider,

a) Whether the offence falling within its jurisdiction is made out or not;
b) Whether offence is committed in its territorial jurisdiction;
c) Who are the persons responsible for the commission of offence, and;
d) Whether in Court's opinion, sufficient grounds are existing for proceeding with the trial. [2008 MLD 728].

Release of accused when evidence is deficient[23].

It is a settled principle of law that the police has power to release a person in custody on his executing a bond with or without sureties, for his appearance before a Magistrate, if and when so required, as is provided under Section 169, Cr.P.C. However, there are two limitations: (i) Section 169, Cr.P.C. applies only to the accused of a case who have never been forwarded to a Magistrate and are confined to the stage of investigation, and, (ii) the admission to bail under section 169, Cr.P.C., is but a purely provisional arrangement, and if the Magistrate or Trial Court considers that the evidence on record does *prima facie* establish the case of a non-bailable offence against him, such Court can by all means issue summons to the accused to face the trial. Powers under S.169, Cr. P. C. can only be exercised by the Police during the course of investigation when accused is in their custody. Once the challan is submitted under S. 173, Cr. P. C. the provisions of S. 169, Cr. P. C. are not attracted. However, if the Court does not agree with placing of accused in column 2 by the Investigation Officer, there is no embargo on the Court in issuing summons to the accused, despite the fact that Investigation Officer shows him innocent.

Two types of accused are placed in Column No.2 of challan; firstly, those who were

[23] Specimen draft at Appendix XXVI

not challaned and were found to be innocent and; secondly proclaimed offenders shown by police with 'red ink'.
Where accused is declared innocent and has been placed in column 2, he is no more an accused person nor can he be treated as such unless trial court takes cognizance and summons him for trial.
Where Investigation Officer allows bail to accused and places him in column 2 of police challan, Inquiry Magistrate shall not be competent to cancel bail which had not been allowed by himself. In the case of the accused who is released by police cannot be committed to custody; as apparent from Section 497(5), Cr.P.C., a High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.
In the cases exclusively triable by the Court of Sessions, once the Magistrate has taken cognizance of the offence, he has to send the case of that Court and it is not open for him to send the case only qua those of the accused who are placed in column 3 of the challan. The wisdom behind it is the celebrated principle, "cognizance is taken of an offence, and, not of an offender."

Supply of copies to Accused[24].
The section 241-A, Cr.P.C. for the Magisterial trial and section 265-C for the Sessions trial, provide that in all cases instituted upon police report (except those triable summarily or punishable with imprisonment not exceeding six months), copies of statements of witnesses under sec. 161 and 164, Cr.P.C., police report and documents forwarded by police, shall be supplied to accused free of cost not less than **seven days before commencement of trial**: exception is the part if any of statements, disclosure of which might defeat public interest. In case of Sikandar Ali Lashari versus the State vide 2016 YLR 62, the Hon'ble High Court of Sindh had been pleased to hold and observe that CDs and USBs if prepared during investigation, shall also form part of supply of copies to ensure fair trial as such was fervent, and stringent inalienable and incontrovertible right of accused for making his defence.

Proceedings against Absconders.
Sections 87 and 88, Cr.P.C. provide for attachment and sale of property of any accused persons or witnesses whose presence is required as a last remedy for compelling for their attendance. If the Court is satisfied after taking evidence that any person against whom a warrant has been issued by it has **absconded or is concealing himself so that such warrant cannot be executed**, such court by adopting procedure laid under section 87, Cr.P.C. proclaim him as offender. The court issuing a proclamation under section 87, Cr.P.C. may at any time order attachment of any property, moveable or immoveable or both, belonging to such person subject to provisions laid down under section 88, Cr.P.C. If such person voluntarily appears or

[24] Specimen draft at Appendix XXVI

is apprehended within two years from the date of attachment and satisfies the court that he did not abscond himself for the purpose of avoiding execution of warrant, and that he did not have such notice of proclamation as to enable him to attend within specified time, he can get such property or its net proceeds if it is sold, back (Sec. 89, Cr.P.C.).

Record of evidence in absence of Accused (Sec. 512 Cr.P.C.).
Where the Court is satisfied that an accused person has absconded and there is no immediate prospect of arresting him, the **competent Court, may examine the witnesses on behalf of prosecution in absence, and record their depositions**. Such depositions will be given in evidence, on arrest of the accused, against him in inquiry or trial against him for which he is charged, if the deponent is dead or his evidence cannot be procured for whatsoever justifiable reason or its procurement might cause inordinate delay, expense or unreasonable inconvenience.
If an offence punishable with death or imprisonment for life has been committed and the offender is unknown, the High Court may direct a Magistrate to hold inquiry and examine witness who can give evidence concerning the offence.

Magistrate may dispense with personal attendance of accused during inquiry.
Sec. 205, Cr.P.C. empowers a Magistrate issuing summons in reasonable circumstances at his discretion to dispense with personal appearance of accused and to permit him to appear through counsel at any stage of inquiry or trial and may also direct his personal appearance later at any stage of inquiry or trial.

COMPLAINT CASES

Complaint defined.: "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under Cr.P.C. that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer. (Sec. 4(1)(h), Cr.P.C.).
This shows that for a valid complaint, the requisites of a legal complaint are: It must be (1) an allegation (oral or written) that some person (known or unknown) has committed an offence, (2) made to a Magistrate, and (3) with the object that he should take action under the law; but a complaint does not include the report of a police officer. In content, a criminal complaint is similar to the plaint in a civil suit, while all the facts need not be given. Besides, the Cr.P.C. nowhere provides that section of the offence be stated in a complaint. A Magistrate can take cognizance of an offence which appeared to be involved in a criminal transaction irrespective of the section actually charged against the accused.
There is no limitation provided for filing of a direct complaint but the longer its delay, the more become the chances of not believing its truth.

Procedure where offence is triable by Magistrate[25].

Where the complaint shows that the alleged offence is triable by Magistrate, the Magistrate taking cognizance of the offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant and also by the Magistrate.

Magistrate, if necessary, conduct a preliminary inquiry in order to determine truth or falsehood of the allegation; such inquiry, however, discretionary and mere failure to comply with provisions of S. 200, Cr. P. C. cannot entail invalidation of proceedings but a mere irregularity curable under S. 537, Cr. P. C. He may also direct for investigation by police. It is worth mentioning that under section 200, Cr.P.C., Magistrate has the option of only one of two alternatives, either to enquire into case himself or to direct an investigation. He cannot have recourse to both alternatives. No investigation can be ordered under section 202 without examining the complainant. Section 203 of the Code empowers a Magistrate to dismiss a complaint if he finds himself convinced by the investigation or inquiry that there does not exist sufficient ground for proceeding with the matter.

And if Magistrate deems fit that the case is of taking cognizance, he may do so and proceed with it like a regular trial. After taking cognizance, he may issue summons for procuring attendance of the accused on a date appointed by him, and, if on such date, the complainant does not appear then upon non-appearance of the complainant, except where the complainant is a public servant and his personal attendance is not required, he may either acquit the accused or adjourn the matter as the circumstances may suggest (Sec.247, Cr.P.C.). Besides, if before passing final order or judgment, application for withdrawal of the complaint is filed, Magistrate may if there are reasonable grounds, allow the withdrawal and thereupon acquit the accused (Sec.248, Cr.P.C.).

Where a complaint is laid before a Magistrate who does not have territorial jurisdiction, the proper course is to return the complaint to be placed before proper Court.

Procedure where offence is triable by Court of Sessions[26].

As goes the reading of section 200(a), Cr.P.C. where a complaint in writing is made before a Magistrate, Magistrate shall not be required to examine the complainant and he may send the case to the Court of Sessions.

The Court of Sessions may send the matter of inquiry to the Magistrate, if it may deem fit and in such case, he may conduct preliminary inquiry in the same manner as if it was triable by his court and then send the findings in a report to the Court of Sessions.

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[25] Specimen order of cognizance at Appendix XXVII

[26] Specimen order at Appendix XXVIII

Challan case and complaint case: preference be given to complaint case first.
It is settled law that where a person is dissatisfied with the findings of the police in respect of the allegations levelled in his crime report, criminal complaint lodged by him would be put to trial first, while the proceedings in the challan case would be stopped till the decision of the complaint case; provided that the complainant has filed the complaint against the same set of accused with the same allegation as mentioned by him in the F.I.R.
In case, where the material evidence, the accused and the witnesses in both, the challan case and the complaint case, are same, the two can be amalgamated into one.

TRIAL (STAGE) OF CRIMINAL CASES

Charge: definition and purpose.
According to encyclopedia law dictionary 'charge' means **an accusation made against a person in respect of an offence alleged to have been committed by him**. The purpose of charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial. The main object of framing of charge is to ensure that the accused has sufficient notice of the nature of accusation with which he is charged and secondly, to make the Court concerned conscious regarding the real points in issue so that evidence could be confined to such points. All facilities should be provided to accused to enable him to understand as to what he may ultimately have to face, bear or undergo.
It is the first step towards criminal trial and depicts commencement of the trial. Framing of charge is a mandatory requirement of law and non-compliance of the same is not remediable under section 537, Cr.P.C. Its provisions vary from section 221 to 240, Cr.P.C.

How charge is to be framed: various situations.
Detailed instructions with regard the framing of charge are contained in Sections 221 to 240 of the Code. **Sections 221 to 227 of the Code speak of the form and contents of a charge.** Section 227 authorizes the Court to alter a charge in the case at any stage of the case before pronouncement of the judgment. Section 228, Cr.P.C. provides that if the charge framed or alteration or addition made in the charge under section 227 is such that proceeding immediately is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may proceed with the trial. If by alteration or addition of charge, it appears that the immediate move towards trial might prejudice the case of accused or the prosecutor, the court may direct for new trial (Sec.229, Cr.P.C.) and so also in such case, the prosecutor and the accused may be allowed to recall or re-examine any witness with reference to alteration or addition of such charge (Sec.231,

Cr.P.C.). For every distinct offence of which a person is accused, there is to be a separate charge and such charge shall be tried separately except in cases mentioned in sec.234 (accused may be charged with and tried for three offence of same kind in last twelve months together), 235 (where offences committed by the accused are connected together forming same transaction), 236 (when it is difficult to determine exactly what offence out of various alleged offences, the accused has committed) and 239 (giving conditions where accused persons may be charged jointly).

Framing of charge[27].

In cases triable by Magistrate, charge is framed under section 242, Cr.P.C. The requirement of law is that a charge should **state the offence committed by the accused and mention the specific name, section and sufficient description of the offence**; if no any specific name has been given to it by law, there should be sufficient definition of it. The charge must allege all facts which are essential factors of the offence in question but there is no set yardstick fixed qua the particulars which should be mentioned in the charge as it depends upon the circumstances of the case.

Magistrates may preferably adopt the language of the relevant section in which charge is being framed.

After the charge is framed and read over to the accused in the language he understands, the Magistrate shall record plea of accused in the words nearest possible as uttered by him.

Procedure when accused pleads guilty[28].

When the accused pleads guilty during the course of trial in addition to his plea, such plea of guilt should be recorded in questions and answers form and in the exact words of the accused in order to find out what the accused exactly meant by pleading guilty and in absence of that the Court cannot convict him on the basis of such plea. Notably, obtaining of signature or thumb-impression on the plea of accused is not a legal requirement but to be in safe zone, Magistrate should adopt such practice of taking signature or thumb impression of the accused.

When the accused pleads guilty, the admission shall be recorded as nearly as possible in the words uttered by him. If the accused pleads guilty to the charge framed against him without any qualification or reservation and shows no sufficient cause as to why he should not be convicted, the Court may proceed to record a **conviction under Section 243 Cr.P.C**. Great care and caution is required in this regard. A plea of guilt can only be recorded where the accused raises no defence at all. Where Court finds even the smallest doubt in the veracity or genuineness of admission of guilt, asserted by the accused, the Court may call upon the prosecution to prove the case.

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[27] Specimen order at Appendix XXIX & XXXX

[28] Specimen show cause and order at Appendix XXXI

Generally, a plea of guilt to the charge cannot be accepted in absence of accused. However, there is an exception. In offences punishable with fine only, a Magistrate, especially empowered in this behalf by Provincial Government, shall, except for the reasons to be recorded in writing, issue summons to the accused and in response of such summons, if the accused desires to plead guilty to the charge without appearing before the Magistrate, he may transmit to the Magistrate before the specified date, by registered post or through a messenger, the said plea in writing and the amount of fine specified in the summons or, if he desires to appear by an advocate and to plead guilty to the charge, to authorize in writing, such advocate to plead guilty to the charge, on his behalf and to pay the fine; the amount of such fine not being less than twenty-five percent nor more than fifty percent of the maximum fine provided for such offence. (Sec.540-A, Cr.P.C.). The provision is restricted to petty offences that are punishable only to fine.

The Section 412, Cr.P.C. provides that notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by a High Court, a Court of Sessions or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

Procedure when accused pleads not guilty.

Where the accused does not plead guilty or does not admit the commission of the offence, the hearing of the case commences and the trial begins (Sec.244, Cr.P.C.); the trial shall proceed and the Court shall hear the evidence of the prosecution and defence. Thereupon, the Court shall decide the matter which may culminate into acquittal or conviction of the accused.

Procedure when accused remains silent at the time of plea.

Where accused remains silent on the question of plea of charge, it may not be admission in proper sense. To remain silent is the right of accused. As a precautionary measure, in such cases, the trial court should proceed to record prosecution.

Procedure when accused pleads not guilty at the time of charge but admits guilt, later.

In cases where accused pleads not guilty to charge framed against him and his case is fixed for evidence. He then subsequently makes an application wherein he pleads guilty and prayer for leniency in sentence. It has been held that second plea on same charge could only be recorded when charge was amended otherwise Courts are not empowered to record other plea. Same charge could not be read over again and again at will of accused. Once a formal charge framed put to accused is denied under section 242, Cr.P.C. provisions of S. 243, ipso facto become inoperative and Court has to proceed under section 244 by hearing complainant and his evidence and afterwards accused and his evidence in defence. Once evidence of prosecution commences there cannot be staged a retreat to section 243, Cr.P.C. by procuring a

plea of guilty from accused and at this stage if accused makes a voluntary confession same will be recorded within requirements of section 364, Cr.P.C. and shall be put to accused for his explanation as incriminating circumstance under section 342 and such a confession shall not amount to a plea of guilty within meaning of Ss. 242 and 243, Cr.P.C.

Withdrawal of Charge.
Section 240, Cr.P.C. provides that when in a case 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. 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 or trial of the charge or charges so withdrawn.

Law of Evidence.
After the charge is framed and the accused pleads not guilty or when the Court thinks that evidence should be procured, prosecution leads its evidence and prosecutes the accused in the Court of law. After prosecution evidence is finished, prosecution may close their side. The accused shall then be asked if he has to lead any defence and incriminating questions may be placed before him (Sec. 342, Cr.P.C.) and if he leads his defence, such evidence shall be recorded (Sec. 340(2), Cr.P.C.). The defence evidence then closes and stage is set for final arguments. Thereafter, the Court gives its findings in shape of judgment.

Evidence Defined.
"Evidence" is a comprehensive term which includes statement of witnesses, parties and documents which are produced in court or judicial forum to prove or disprove the case.
The purpose of evidence is the establishment of facts in issue, by proper and legal means, to the satisfaction of the Court, and, such is done by production of evidence. All judicial evidence is either direct or circumstantial. A direct evidence is a statement of what a man has actually seen or heard. A circumstantial evidence is that from which fact in issue to be inferred. Circumstantial evidence is perhaps the best sort of evidence, based upon the rule, 'men may lie but circumstances will not.'

Kinds of Evidence.
Oral & Documentary Evidence: Oral evidence includes all matters which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry. The Qanun-e-Shahadat, 1984, provides under Article 70 that all facts, except the contents of documents, may be proved by oral evidence. Further, it must in

all cases whatever be direct; as if the fact is seen, it must be the evidence of a person who says he saw it or if the fact is heard, it must come from the evidence of a person who says he heard it; as in accordance with the provisions laid down in the Article 71 of the Order.

Documentary evidence means all documents produced for the inspection of the Court. Article 72 of the Qanun-e-Shahadat, 1984, requires that contents of documents may be proved either by primary or secondary evidence. Documents may be either public or private. Article 85 of the Order provides a list of documents which are considered public documents. Article 86 of the Order says all documents coming not within purview of public documents, are private documents.

Primary & Secondary Evidence: Article 73 of the Qanun-e-Shahadat, 1984, defines **'primary evidence' as the document itself produced for the inspection of the Court**. Where a document is executed in several parts, each part is primary evidence of the document. Where a document is executed in counterparts, each counterpart is primary evidence, as against the party executing it. Where a number of documents are made by printing, lithography, each is primary evidence of the contents of the rest. Where there are copies of the common original, they are not primary evidence of the contents of the original. Article 74 of the Qanun-e-Shahadat, 1984, defines **'secondary evidence' as including (a)** Certified copies; (b) Copies made from the original by mechanical process which in themselves ensure the accuracy of the copy and copies compared with such copies; (c) Copies made from or compared with the original; (d) Counterparts of documents as against the parties who did not execute them; and, (e) Oral accounts of the contents of a document given by some person who has himself seen it.

Article 75 of the Order requires that documents must be proved by primary evidence except in certain cases mentioned by law. The cases referred herein are given under Article 76 and the corresponding Articles of the same in the Qanun-e-Shahadat, 1984.

Competency of witness.

Article 3 of the Qanun-e-Shahadat, 1984 lays down the eligibility criterion to testify in the Court of law. It provides that all persons shall be competent to testify unless;

(i) The Court considers that they are **prevented from understanding** the questions put to them, or from giving rational answers to them,

(ii) They are of **tender age**,

(iii) They are of extreme **old age**,

(iv) They are afflicted with some **disease**, whether of body or of mind, or any other cause of the same kind, or,

(v) Where a person has been convicted by a Court for **perjury or giving false evidence**, unless the Court is satisfied that he has repented thereafter and has mended his ways.

In Article 3 of the Qanun-e-Shahadat Order, the words "all persons" include non-Muslims. This way in Article 17 (supra) the word 'a person' in sub-Article (1) is Whereas, the words "tender years" as used in Article 3 do not specify any particular age of a witness. It is only the capacity of a witness to understand things rationally and then to reply them. Of late, a more reasonable rule has been adopted and the competency of a child is now regulated not only by their age but also by the degree of understanding which they appear to possess. The words "tender years" thus have reference to understanding the questions and the ability to give their answers rationally, and not merely to age of a child. However, evidence of a child shall even otherwise be treated a delicate matter and it would not be safe to rely upon unless corroborated. (PLD 1995 SC 1).

Evidence of deaf and dumb.

As a rule of criminal jurisprudence, a deaf or a dumb person should not be prevented from being a credible and reliable witness merely due to his or her physical inability. Such a person though unable to speak may convey his contention through writing if he or she is literate. In case, he or she is not literate, such person may convey the same through signs and gestures. The **Qanun-e-Shahadat, 1984 is silent** about the evidence of a deaf and dumb person. However, **section 119 of the Evidence Act, 1872 provided** that "A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing it or by signs; but such writing must be written and the signs made in open court. Evidence so given shall be deemed to be oral evidence."

The rule of propriety provides that when something is not prohibited, it may be deemed permissible. By this token, evidence of deaf and dumb persons may be recorded by resorting to the procedure provided by the section 119 of the Evidence Act, 1872.

Order in which evidence may be recorded.

Article 130 of the Qanun e Shahadat, 1984, regulates the order in which evidence may be recorded. It may proceed in an order: a) prosecution evidence, i.e., evidence which the prosecution produces in support of its case, b) examination of the accused, and, c) defence evidence.

However, there is no fixed stage for the examination of witnesses by the Court under section 540 of the Cr.P.C. Section 540 Cr.P.C has given unlimited powers of Court to summon any person whose evidence is essential, even including the person intended to be produced as a defence witness.

Prosecution Evidence.

In criminal trials, the prosecution evidence has to be brought by prosecution which may be challenged by the defence. The burden to prove the charge against accused shall be upon prosecution. In inquiries and trials, evidence is generally to be recorded in presence of accused, or in presence of his pleader in cases where his attendance is

dispensed with.
The prosecution discloses its case against the accused though examination in chief of witness, then (if the defense party so desires) cross-examines the witness, then (if the prosecution so desires) re-examines (Article 133, Qanun e Shahadat, 1984). The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. The re-examination shall be directed to the explanation of matters referred to in cross-examination and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine the matter.

Relevancy and Admissibility of Evidence.
Law does not operate in a vacuum. All legal disputes are consequence of some factual situations. Such situations may involve mixture of question of law and fact.
Question of fact is one which attempts to prove what happened. Such question may arise in connection with legal principles that may be argued in a case; for instance, to decide as to whether taking away a vehicle of same model, colour etc. as that of one's own may in some circumstances, fall within the definition of 'theft'. It is the foremost job of the Court to establish the existence of facts alleged within a given case. A fact may be relevant if it enables the Court to reach conclusion with regard to issues placed before it.
Admissibility, on the other hand, is a rule that provides the Courts with the means of excluding evidence that is irrelevant, which for some reasons is too unreliable to be accepted by the Court. The example in sight may be the rule in criminal evidence excluding an involuntary confession, or confession before police.
As far as the law of this land is concerned, in the afore stated lines, it has already been discussed that the relevance of evidence shall be determined by the criteria laid down in Qanun-e-Shahdat, 1984, and, only such evidence shall be admissible which is relevant under the rules of the said order.

Judge to decide admissibility of Evidence.
Under Article 131 of the Qanun-e-Shahadat, 1984, it is the prerogative of the Judge to decide as to admissibility and relevancy or otherwise of evidence before him. The law says that when either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant, and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

Burden of Proof.
In criminal law, **burden to prove the guilt of accused lies upon prosecution**. It is not for the accused to disprove case of prosecution, he is only required to create a doubt in the case of prosecution and, once he succeeds in doing so, he is entitled to benefit of doubt.

Standard of Burden of Proof.
General principle of criminal law is that prosecution has to prove its case against the accused and the standard of proof is to prove the same **beyond reasonable doubt**. In exceptional cases; where the relevant statute may provide in unambiguous terms; the burden to discharge falls on shoulders of the accused; for example, The Foreigners Act, 1946 provides under section 9 that burden to prove lies upon a person regarding whom a question arises, subject to provisions of the Act itself, that whether he is not a foreigner or is not a foreigner of a particular class or description as the case may be.

Previous character of accused when relevant.
Article 67 of the Qanun-e-Shahadat, 1984 says that in criminal proceedings the fact that the person accused is of a **good character is relevant**. Article 68 of the Order, on the other hand, provides that in criminal proceedings the fact that the accused person has a **bad character is irrelevant**, unless evidence has been given that he has a good character, in which case it becomes relevant; the law would not attract to cases in which the bad character of any person is itself a fact in issue.

Quality and not quantity is the Principle.
Plurality of witnesses is not required for proof of a crime. Court should be concerned with quality and not with quantity of evidence necessary for proving or disproving a fact. It is not the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events upon which the prosecution is essentially based irrespective of considerations of number and reliability. The question whether a witness is material and ought to have been called depends upon the circumstances of each case.

Acquittal at any Stage[29].
Section 249-A of the Code empowers a Magistrate to acquit the accused **at any stage of the case** if, after **hearing the prosecutor and the accused** and for reasons to be recorded, he considers that the **charge is groundless or that there is no probability of the accused being convicted of any offence**.
Section 249-A Cr.P.C is an exception to normal rule that acquittal takes place after full trial. This provision reflects a compromise between collective good of society and rights of an individual offender. Idea is to spare offender rigors of full trial if Court at any stage finds that charge is groundless and prosecution is not likely to succeed.

[29] Specimen order at Appendix XXXII

Defence Plea[30].

Section 342 Cr.P.C. provides that for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry, or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall for the purpose aforesaid, question him generally on the case after the witnesses for prosecution have been examined and before he is called on for his defence. The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry or trial for, any other offence which such answers may tend to show he has committed.

Object of examination of accused under S.342, Cr.P.C. is to explain the circumstances which could lend to incriminate or adversely affect him, therefore, such examination of accused was not a mere formality; but, a mandate to enable the accused to explain any circumstances appearing against him in the prosecution evidence.

It is the requirement of law that statement of accused recorded under Section 342, Cr.P.C. should be got **signed/thumb marked by the accused**. This mandatory provision of Section 364 if not complied with amounts to an illegality and not irregularity curable under Section 537, Cr.P.C.

The accused is a competent witness and may give evidence on oath in his defence (Sec. 340(2), Cr.P.C.). If he so chooses to give evidence on oath he may be cross examined by prosecution.

Final arguments / Closing submissions.

After the accused has led his defence, final arguments from prosecution and the accused (himself or through Advocate on his behalf) are called upon. No provision of the Code of Criminal Procedure governs this issue yet it has become **a recognized practice** in accord with the principle of natural justice, in courts in the best interest of justice.

Decision / Judgment.

After all agony of trial comes to end, there comes a time to award decision or judgment which may result into either **acquittal under section 245(i), Cr.P.C**. or **conviction under section 245(ii), Cr.P.C**. of the accused. Where an accused is confined in jail and he is acquitted, he may be released in the case in question by a release writ, issued by the Court directing the jail superintendent to execute the same. If the acquitted accused is on bail, his bail bonds in the case shall stand cancelled and surety is to be discharged.

[30] Specimen statement at Appendix XXIII

Acquittal[31].

"Acquittal" means the legal and formal certification of the innocence of a person who has been charged with crime. Section 245(i), Cr.P.C. of the Code empowers the Magistrate to acquit the accused of his charge if upon taking evidence referred to in Section 244, and examining the accused, finds him Not guilty.

Law allows to persons accused of criminal offences the **benefit of 'reasonable doubt' and the standard of proof of criminal offence is that of 'beyond shadow of reasonable doubt'.** What is 'reasonable doubt' is not a question of law; it is essentially a question of human judgment to be formed in each case, after taking into account fully all the facts and circumstances appearing on the entire record.

For giving benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is circumstance which has created reasonable doubt in prudent mind about the guilt of accused, then accused will be entitled to benefit of such doubt, not as a matter of grace, but as a matter of right. Where evidence would create doubt about the truthfulness of prosecution story, its benefit has to be given to accused without any reservation. Benefit of doubt is a right of accused. (1997 SCMR 25).

An appeal against lies with High Court (Sec. 417, Cr.P.C).

Release Orders[32].

Where an accused is acquitted from charges, and if he be confined in jail, a "Release" writ is issue by the Court directing the Superintendent of jail to execute the same in accordance with law. Where the Superintendent has any doubt if the orders are genuine or otherwise for whatever reason, he shall not release the prisoner and make a reference to the Court concerned before the order is carried out. (Rule 127, Pakistan Prison Rules).

In practice, this often leads to suffering of the prisoner on cost of procedural constraints. For example, where in a case, F.I.R is lodged under sections 365/382/506 B, P.P.C, and the accused is remanded to the prison in said sections. Later, one of the sections, say 365 P.P.C. is deleted either at the time of taking cognizance or at framing of charge or at any stage (even at the stage of judgment/final orders). The Court at conclusion of trial or at any stage when finding justifiable, acquits the accused and sends the "Release Order" to the prison, according to the latest development with regard to alleged sections in the case, the same does not tally the remand papers of initial stages as available with the record of the prison. As a result, the Superintendent requests the Court to clarify the issue so that the Court's orders could be complied with, accordingly. It takes one or two days more detention of the prisoner for no cause on his part, in the process of this clarification. In such cases, a

[31] Specimen judgment at Appendix XXXIV

[32] Specimen order at Appendix XXXV

detailed "Release" order may prevent the prisoner to suffer from the procedural sufferings; after all, no one should suffer at the cost of act of the Court.

Principle of Double Jeopardy.

Article 13 of the Constitution of Pakistan, 1973 provides that no person shall be prosecuted or punished for the same offence more than once. Protection against double jeopardy is embodied under said Section **403, Cr.P.C.**

Section 403, Cr.P.C clearly demonstrates that **no one should be punished or put in peril twice for the same matter**, but the prerequisite is that a person, who has been tried once, should have been tried by a court of competent jurisdiction and, in case of conviction or acquittal, he should not be tried again for the same offence. Person once tried and acquitted for lack of sufficient evidence could not be tried again even though sufficient evidence could have been subsequently found against him.

Conviction[33].

Conviction means to **find guilty of an offence**. Sentence is punishment awarded to a person convicted in criminal trial. Conviction is followed by sentence. Only when a person has been found guilty of an offence can the question of sentencing him arise. An order or judgment which merely says e.g. that the accused is sentenced to such and such imprisonment is not a correct order or judgment. The correct order will be to say that accused is held guilty and convicted of such and such offence and is sentenced to such and such punishment.

Sentence follows Conviction. It should therefore be commensurate with the gravity of the offence and the manner in which the offence has been committed. For instance, the Pakistan Penal Code has placed minimum punishment in some cases such as that under Sections 392 and 395 of the Code, such has been the intention of Legislature keeping in view the severity of offences and such intention must be given due respect.

Where a Court decides to pass a sentence of imprisonment on an accused for an offence, it shall take into consideration the period, if any, during which such accused was detained in custody for such an offence, as says the rule laid down under Section 382-B, Cr.P.C.

Also in case of conviction, it is mandatory requirement that the accused be given a copy of the Judgment at the time of pronouncing the judgment, or when the accused so desires, a translation of the judgment in his own language, if practicable, or in the language of the Court, without delay. Such copy or translation shall be given free of cost.

An appeal from conviction by Magistrate lies to the Court of Sessions except when conviction is made under section 124-A of the P.P.C. wherefore, appeal shall lie to

[33] Specimen judgment at Appendix XXXVI

High Court (Sec. 408, Cr.P.C).

Mitigating Circumstances.

Mitigating circumstances are those; with reference to criminal matters; which do not excuse a person for his criminal act or offence but which may show that the accused had **valid reasons for his act and may tend to lessen the culpability of an accused.**

The Court should take all efforts to look into the mitigating factors of the offender at the time of decision; factors which even the offender himself or his pleader may not have pointed out. These factors may include **good character, genuine regret, plea of guilt, good work record, family issues, age, inadequacy, domestic or emotional stress, physical or mental disability, and, financial straits.**

These factors may be set-off by previous conviction, if any, lack of contrition, persistent offending, premeditation of offence, lack of remorse, and, lack of self-control.

Quantum of Punishment.

Sentence award should be offender-oriented and not offence-oriented; there must be a difference between first-time offender and a habitual offender.

The **elements** to be considered for assessing the quantum of sentence are: (a) The nature of the offence, (b) The circumstances in which it was committed, (c) The degree of deliberation shown by the offender, (d) The provocation which he received, (e) The antecedents of the prisoner up-to the time of sentence, (f) His age and character.

Principles of Sentencing.

While determining quantum of punishment, the Court must see the gain made from the offence. For instance, in consequence of an offence, accused A got a benefit of Rs. 100,000 and the accused B got Rs. 90,000, equal punishment to the two shall be injustice under circumstances.

The four accepted principles of sentencing are as under:

(I) ***Retribution:*** It is punishment for wrongdoing imposed on behalf of the community to mark its disapproval of the offence committed.

(II) ***Deterrence:*** It is the punishment designed to deter an offender from breaking the law again.

(III) ***Prevention:*** It relates to the limiting of the offender during the period of punishment; for instance, when he is jail.

(IV) ***Rehabilitation:*** By this principle, the penalty is imposed to reform the offender so that he may not offend again.

Judgment Writing.

There is no set standard of writing judgments; no hard and fast style. Every judge may different way of writing judgments with variation in style. However, the most

basic ingredients of a judgment in a criminal case are the facts of the prosecution case, the points of determination, the decision reached at, the reasons thereto, final order convicting or acquitting the accused, awarding sentence in case of conviction, and signature and the date of decision and announcement; the particular offence, its relevant section, the law under which accused is punished, if so, and the quantum of punishment are the additional features.

Further, the judgment should reflect proper appreciation of evidence brought on record and due application of judicial mind by the judge. It may express the demeanor recorded of a witness during evidence. All exhibits and marks in evidence should properly been expressed; documents produced in evidence are exhibited while articles such as cloth or CDs are marked.

In case of conviction judgment, further, separate sentence must be passed for each offence proved, by the court. In case of acquittal judgment, the judgment must show the offence of which the accused is acquitted.

The judgment should be written in language of court or in English. It should be simple and precise; not verbose. Judge must keep in mind that the audience is not only the men of legal fraternity but also common public and litigants.

MISCELLANEOUS / OTHERS

Compounding of offences[34].

There are two types of offences, which are compoundable under section 345, Cr.P.C. The first category of offences, mentioned in Section 345(1), Cr.P.C is compoundable without permission of the Court. It is pertinent to note that even in such cases, parties are required to submit an application before the Court for a proper order of acquittal of the accused under Section 345(6), Cr.P.C., since the final authority to allow such compromise is the Court. The second category of offences mentioned in Section 345(2), Cr.P.C is compoundable with the permission of the Court. In this situation, parties are required to seek permission from the Court which shall be given by the Judicial Officer after using his judicial mind.

All the offences shown in column Nos.1 & 2 of the table of subsection (2) of S.345, Cr.P.C. can only be compounded with the permission of the court before which any prosecution of such offence is pending which is prerequisite condition. Any settlement between the parties as regards the compromise of the offence before the prosecution of the case having started is ineffective one. Any compromise arrived at between the parties out of the court has no value in the eye of law. Court should ensure compromise to be *bona fide* and genuine by which parties have forgotten their differences. Acceptance of such compromise would be in the interest of justice.

Compounding of an offence under section 345 of the Code of Criminal Procedure,

[34] Specimen order at Appendix XXXVII

with or without the permission of the Court, has the effect of an acquittal. In such cases, no judgment on facts is needed, but the consent of all the parties concerned must be recorded and in cases, where permission of the Court is necessary for compounding the offence, the reasons for granting permission should be stated in the order directing the acquittal of the accused.
It is also apparent that an offence can be compounded even in respect of absconder and hence, arrest of a person and his production before the court is not mandatory to extend benefit of compromise to him (Ref. PLD 2012 Sindh 35).

Summary Trials (proceedings).
Chapter XXII of the Cr.P.C. provides for general powers to trial summarily various offences mentioned under section 260, Cr.P.C while some of offences with special recommendation from Provincial Government as mentioned in section 261, Cr.P.C.; both sections are restricted to selected offences of minor nature from amongst Pakistan Penal Code; and Magistrate could pass sentence of imprisonment in such offences for a term not exceeding three months (Sec.262, Cr.P.C.). However, Magistrate may come before some different statutes / special laws where he may be required to try the offences of the laws summarily and the procedure would stand same as in chapter XXII of the Cr.P.C.
The procedure laid down says that in such cases where no appeal lies, Magistrate need not record evidence of the witnesses or frame a formal charge but he may include the particulars: (a) the serial number, (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 (d), clause (e) clause (f) or clause (g) 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, and, in the case of a conviction, a brief statement of the reason therefor, (i) the sentence or other final order, and,
(j) the date on which the proceedings terminated.

Provision of release on Probation.
Releasing of offenders on probation serves the purpose of reformatory form of punishment. A court-imposed criminal sentence, subject to certain stated conditions, that release a convicted person into the community instead of sending him to jail, is called ‘probation’. The person on probation is termed as ‘probationer’.
In U.S.A., the Advisory Committee on Penal Institutions, Probation and Parole to the National Commission of Law Observance and Enforcement, defines ‘probation’ as,

> ***“Probation is a process of treatment, prescribed by the Court for persons convicted of offences against the law, during which the individual on probation lives in the community and regulates his own life under conditions imposed by the court ... and is subject to***

supervision by a probation office. Length of the probation period varies, and is determined by the court."[35]

Under Section 3 of the Probation of Offenders Ordinance, 1960, the following Courts are empowered to exercise powers of releasing offenders on probation,

a) A High Court;
b) A Court of Sessions;
c) A Magistrate of the First Class; and,
d) Any other Magistrate specially empowered in this behalf.

Under Section 3 of the Probation of Offenders Ordinance, 1960, the following Courts are empowered to exercise powers of releasing offenders on probation.

Under Section 4 of the Ordinance, where a Court is of opinion that a person convicted of an offence punishable for not more than two years by it and not having been previously convicted, after due regard to his various aspects, a probation order is not appropriate, the Court may after recording its reasons in writing, make an order for discharging him after due admonition, or if the Court deems fit, it may likewise make an order discharging him subject to the condition that he enters a bond, with or without sureties, for committing no offence and being of good behaviour during such period not exceeding one year from the date of the order as may be specified therein.

Section 5 of the Ordinance specifies that instead of sentencing the offender at once, the Court may place the offender on probation. The order cannot be made in respect of males convicted under chapter VI or VII of the P.P.C., or under sections 216-A, 328, 382, 386, 387, 388, 389, 392, 393, 397, 398, 399, 401, 402, 455 or 458 of the P.P.C., or an offence punishable with death or life imprisonment, and, in respect of females convicted of any offence other than an offence punishable with death. Again, offenders cannot be released on probation unnecessarily on ground of inexpediency.

Juvenile Offenders.

The Juvenile justice system ordinance 2000 was promulgated on July 01, 2000. The Ordinance came as a realization of the exigency to provide for protection of the rights of children in criminal litigation, their rehabilitation in society; and, the urge to reorganize the Juvenile Courts. The Sindh Juvenile Justice Rules were made by the Government of Sindh on May 27, 2002. The rules were made in exercise of the powers conferred by Section 15 of the Juvenile Justice System, 2000 by the Government of Sindh. Following are the important features of the law.

A juvenile is a child who at the time of commission of an offence has not attained the age of eighteen years. The ordinance neither defines a female child nor does it

[35] Burton, C. William, Legal Thesaurus, p. 408

differentiate between a male and a female child. According to the section 07 of the said Ordinance provides for the procedure of the determination of the age of child, acceptable for the purposes of this Ordinance. It strikes at reasonable inquiry into the determination of the age.

The section 04 of the said Ordinance also speaks of a speedy trial. It provides that on taking cognizance of an offence, the Juvenile courts shall decide the case within four months. The Section 05 of the Ordinance under discussion provides for a separate trial of a child from an adult person. It clearly says that no child shall be tried for an offence together with an adult. In this regard, a mechanism till translation of the provision turns into reality can be evolved in a manner within parameters of law such as police may be directed that in cases where juvenile and adult are co-accused in same case, two separate challans catering juvenile and adult's case separately can be submitted and separate filed be prepared in Court so that separate trials could be proceeded.

The Section 09 of the Ordinance states the duty of a Probation officer to have been to assistance of the Juvenile Court by making a report on the child's character, educational, social and moral back ground. The Section 10 of the Ordinance provides for the provisions of the bail or release of the child. According to the said section, where the child is arrested in a bailable offence, and not having been already released on bail, be released by the Juvenile Court on bail with or without surety. The exception to this provision is the situation where it appears that there are reasonable grounds for believing that the release of the child shall bring him into association of criminals or expose him to some danger; in this case, he shall be placed under the custody of a probation officer or a suitable person associated with the welfare of children if parent or guardian is absent. But in no case, shall he be kept in a Police station or jail in such cases. If a juvenile is not released by the Court under the circumstances stated above, the Court shall ask to trace out the guardian of such child. And after the guardian is traced out, the child shall be immediately release on bail.

Moreover, where a child under the age of fifteen is arrested and detained for an offence which is punishable with imprisonment of less than ten years, he shall be treated as if he was accused of commission of a bailable offence.

The other circumstances that entitle a child for bail are (i) where the child is accused of an offence punishable with death but the trial has not been concluded despite his continuous detention for a period exceeding one year; (ii) where the child is accused of an offence punishable with imprisonment for life but the trial has not been concluded despite his continuous detention for a period exceeding six months; and

where the child is accused of any offence not punishable with death or imprisonment of life but the trial has not been concluded despite his continuous detention for a period exceeding four months. The exception to these is where the offence has been committed by a child under fifteen years of age and is, in the opinion of the Court, a serious, heinous, gruesome, brutal, sensational or shocking to public morality.

Section 12 of the said Ordinance also provides for no child to be handcuffed, put in fetters or given any corporal punishment at any time while in custody, whatever is contained in any other law. The exception to the rule of 'no handcuff 'is a situation where there is reasonable apprehension of the escape of the child from custody; in that case, he may be handcuffed.

Proceedings in offences affecting administration of Justice.
The offence referred to in clause (a) of section 195, Cr.P.C., offences under section 172 to 188 of P.P.C relate to contempt of the lawful authority of public servants; and, offences under sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, 228, 463, 471, 475, and 476 P.P.C. referred to in clauses (b) and (c) of section 195, Cr.P.C. relate to offence committed during court proceedings. This section **requires a complaint in writing of the public servant concerned, of or some other public servant to whom he is subordinate, before a Court can take cognizance of these offences and therefor, cognizance upon police report for these offences will not be lawful.** The words "subordinate" means inferior and bound to obey lawful orders of his official superior. The offences referred to in this section relate to writing of the public servant concerned, or some other public servant to who, he is subordinate.

Procedure of Magistrate in cases, which he cannot dispose of.
Section 346, Cr.P.C. provides where a Magistrate is unable to dispose of a criminal case. If in course of an inquiry or trial it appears to the Magistrate from the evidence that the case is triable by some other Magistrate, he is to stay proceedings and forward the case with a brief report to this effect to the Session Judge or to such other Magistrate who has jurisdiction as the Session Judge directs.

Procedure when, after commencement of trial, Magistrate finds case should be tried by Court of Session or High Court.
If in any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session of High Court, he shall send the case to the Court of Session or High Court, for trial.

Stop proceeding of case[36].
Magistrate has power to stop proceeding of a case it any stage **without pronouncing any Judgment either of acquittal a conviction**, and may thereupon release the accused; and of course, he has to record reasons for such order (Sec. 249, Cr.P.C). Notably, it's a matter of 'release' and not 'acquittal', and, such release may amount to release from liability to attend the Court as is the case of release under discharge by

[36] Specimen order at Appendix XXXVIII

the Court. Further, liability of surety for production of such accused before the Court shall also stand discontinued and cannot be continued for indefinite period.

Award of Compensation.

Magistrate has power to award expenses or compensation out of fine imposed by the Court while sentencing in offender. Such power may be used in (a) in defraying expenses property incurred in the prosecution; (b) in the payment of nay person of compensation for any loss, {injury or mental anguish or psychological damage} caused by the offence, when substantial compensation is in the opinion of the Court, recoverable by such person in a Civil Court; (c) when any person is convicted of any offence which includes theft, criminal misappropriation, breach of trust, or cheating or of having dishonestly received or retained or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stole, in compensating any bona fide purchaser, of such property for the loss of the same if such property is restored to the possession of the person entitled thereto. However: if the fine is imposed in a case which is subject to appeal, on such payment shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal be presented, before the decision of the appeal (Section 545, Cr.P.C.).

Likewise, Magistrate are reminded that false and frivolous litigation in criminal sides be discouraged by imposing heavy costs, compensation and penalties in accordance with the provisions of section 250 Cr.P.C. so that the precious time of the Courts may not be wasted and utilized for redressal of genuine grievances of the litigants (Chapter D, titled as 'Expeditious disposal of cases', sub-chapter titled 'Criminal cases', Clause 14, the National Judicial Policy, 2009).

Disposal of (case) Property[37].

Police are empowered to seize in property which may be alleged or suspected to have been stolen or may have been found to create suspicion of commission any offence (section 550, Cr.P.C.). A report of such seizure shall be made to the Magistrate who is required to pass appropriate order for disposal of the same in accordance with provisions laid down under section 523, Cr.P.C.

If there appears that some offence has been committed regarding some property or some property has been used for commission of any offence and such property is produced before a criminal Court during any inquiry or trial, the court may while pending the conclusion of the inquiry or trial, pass appropriate order for disposal of the same in accordance with provisions laid down under section 516-A, Cr.P.C.

When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence

[37] Specimen orders at Appendix XXXIX, XL & XLI

appears to have been committed, or which has been used for the commission of any offence, subject to provisions laid down under section 517, Cr.P.C.

Supervisory Proceedings[38].

At times, Magistrates are deputed for certain administrative like proceedings by the Sessions Judge or Additional Sessions Judge and sometimes, Magistrates happen to act out of their own powers and responsibilities for such like proceedings

A Magistrate may receive directions under section 491, Cr.P.C. in of nature of a Habeas Corpus from the Sessions Judge to conduct raid its someplace or police station where some innocent person is alleged to have been illegally detained. If the place be a police station, the Magistrate may conduct raid and recover, if found and if it is also observed that he had been illegally detained by going thorough Roznamcha of the police station, the alleged detune and set him free while seeking personal recognizance (P.R.) bond from him. He should then record all proceeding in the Roznamcha register of the police station wherein he may direct the concerned in charge of the police station and so also the recovered alleged detenue to appear before the Court of Sessions on the date and time fixed by him as per given directions from the Sessions Judge.

Then, there are supervisory proceedings. Sometimes, Magistrate may be deputed to supervise proceedings of raid to be conducted by law enforcing agencies such as F.I.A. or Anti-corruption. In such like proceedings, he may accompany them and supervise entire proceedings in his presence. The officials may prepare a memorandum to the effect of proceedings and such memorandum shall be endorsed by the Magistrate in his signature. The Magistrate shall then send report of the proceedings to the Sessions Judge / Additional Sessions Judge, as the case may be.

Then, there are proceedings for exhumations and post-mortems. In case a person dies in police custody, an inquiry into cause of death can be held by Magistrate under provision of Sec. 176, Cr.P.C. The Magistrate may also hold inquiry into cause of death where a person has committed suicide, or has been killed by another, or by any animal, or by machinery, or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence; and, such inquiry shall be in addition to investigation held by a police-officer. If such deceased has already been interred, the Magistrate may if he deems fit, direct for disinterring of the dead body in order to discover the cause of his death; this could be done upon application by aggrieved as well as by prosecution. In Pakistan, there is no time limit fixed for exhumation or disinterment of the dead body. The procedure for the exercise of such power is laid down in Sec. 176, Cr.P.C.

[38] Specimen drafts at Appendix XLII

Case diaries and arrangement of Cause list[39].
Magistrate should write day-to-day (date-by-date) diaries of criminal cases pending before his court under his hand (if not in his hand then under his dictation) and such shall be signed by him. The cause list of cases on day to day basis should be prepared in a manner which should neither cause inconvenience to parties nor letting matters without progress.

Incorporation of arguments from Advocates in Orders / Judgments. Magistrate should incorporate in their orders and judgments the ideas in brief advanced by learned Advocates during their arguments. They also should not only cite the case laws produced or relied by the Advocates but also be very specific as to what such case laws pertained to or what was the theme of those case laws; this requires the Magistrates to go through the case laws cited or relied upon.

Citations / Case Laws Reliance.
Where Magistrates rely upon any citation or case law while deciding any matter, they are obliged to cite the same in an open and obvious manner; with names of the parties, book (journal / digest etc.) and page number, and with proper paragraph or specific observation relied upon. In this regard, head notes or placitums should be ignored and the main idea relied upon should be reproduced from the actual judgment. For instance, a Magistrate seeking guidance from or relying with regard to interpretation of statute upon a case law, i.e. PLD 2015 Supreme Court 15, should reproduce particular paragraph No.9 of the judgment with all data of the case law and not head note (d) of it, preferably in italics. Thus, he may cite in the following manner:
The Honourable Supreme Court of Pakistan in Mst. Shahista Bibi and another versus Superintendent, Central Jail, Mach and 2 others vide PLD 2015 Supreme Court 15 Had been pleased to observe,

> ***"It is also hard and fast principle relating to interpretation of criminal law, which curtails the liberty of a person that it should be construed very strictly and even if two equal interpretations are possible then the favourable to the accused and his liberty must be adopted and preferred upon the contrary one."***

Short Orders.
There are some routine applications upon which one-line or few-word orders may suffice. Specimen of such like orders are given at Appendix XLIV.

[39] Specimen draft at Appendix XLIII

FINAL NOTE.

The philosophy of criminal justice system is that a criminal act is injurious not just to an individual but to society as a whole. Justice in its truest sense of the word is the ultimate goal of the entire criminal justice system. Hence, administration of justice should be in strict accordance with the rules and laws, fixed and recognised by the State. After all, laws are laid down for the welfare of the people and safeguard of their rights.

Criminal justice evolved under circumstances has the objective of reforming the criminal minded people, and, theories of punishment were devised aiming at such objective. While determining quantum of punishment, the Court must see the gain made from the offence. Punishment should be proportionate to the offence of which accused is charged. When an offence is proved against the accused, Court should never hesitate to award punishment for that offence, even if it is be the maximum one given for the offence, however. Punishment in shape of imprisonment, may serve a number of purposes; such as making the criminal unable to perpetrate further crimes and, a chance of rehabilitation of the offender.

In criminal justice system in our country, it is the job of prosecution to prove the case against alleged offender and such burden does not shift from prosecution even if accused takes up any particular plea and fails in it. Not to forget, however, that an accused has legitimate right of defence, which cannot be taken away. Needless to say, wrongful conviction is worse than wrongful acquittal.

The principle is that justice should not only be done but should also be seen to be done. It follows that the prime duty lies on the shoulders of the judicial officers to respect all the standards of judicial conduct and perform their duties without any bias or prejudice. The norms of natural justice must be observed.

The mechanism of criminal justice system, fostering the cause of justice is provided in the Code of Criminal Procedure, 1898. It provides mechanism to make sure that accused person gets the full and fair trial in accordance with established norms and principles of natural justice. It has become an established norm that no person should suffer for the act of the Court.

The object of the Criminal Procedure Code like other procedural codes is designed to further the ends of justice and not to frustrate them by endless technicalities. It is the duty of the Court to do justice according to law, and, apply correct law and grant relief to aggrieved party even if correct provision of law is not invoked by party. Technicalities should be overlooked without causing any miscarriage of justice, in the best interest of justice. The Courts are expected to ensure smooth running of administration of justice, therefore.

A P P E N D I C E S

APPENDIX I

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Suleman s/o Khan

FIR NO. 123/2017 U/S 392/34 P.P.C.

P.S.

ORDER

Accused Suleman is produced in custody by the Investigating Officer / Arresting Officer Shahbaz of PS KKK in FIR No.123/2017 under section 392/34 P.P.C. This is first remand. The police offer has placed a request for granting fourteen days police custody remand of the accused on the ground that recovery has yet to be effected.

I have heard the officer and have gone through the material including diaries placed before this Court. I have also heard the accused in person and so also through this pleader; the accused has not complained of any maltreatment at hands of police.

Record shows that the matter in hand pertains to robbery and it is alleged in record that a weapon was used to rob the complainant, and, that only partial recovery of robbed articles is effected till yet. Record further shows that the accused apparently seems connected with commission of offence alleged.

In the given situation, the police officer's request seems cogent to the extent of granting the accused to police custody remand; and hence, accused is remanded to police custody for two days. Police is directed to submit progress report along with production of accused on next date of hearing.

Office is directed to send the copy of this order to the Hon'ble District and Sessions Judge, District ABC, in compliance of provisions laid down under section 167(4), Cr.P.C.

Given under hand and seal of this Court, on this 06th April, 2017.

APPENDIX II

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC
Crl. Case No. /2017

The State …… Vs …… Khadim s/o Naveed
FIR NO. 124/2017
U/S 392/324/34 P.P.C.
P.S. KKK

ORDER

Investigating Officer Shahbaz of PS KKK in FIR No.124/2017 under section 392/324/34 P.P.C. has appeared before this Court. He has furnished a medical report of one accused Khadim allegedly involved in the offence vide the FIR. The medical letter / report says that the accused is in injured condition and is thus, hospitalised at Jinnah hospital, Karachi and is unable to move since any travelling may involve risk to his health. The police offer has placed a request for granting fourteen days police custody remand of the accused on the ground that recovery has yet to be effected.

I have heard the officer and have gone through the material including diaries placed before this Court. I have also gone through the medical report.

Record shows that the accused apparently seems connected with the commission of offence alleged. However, he has not been produced in custody before the Court and a remand cannot be given to accused in his absence.

In the given situation, a sanction is hereby given to the detention of the accused in hospital. The police concerned shall take all measures to ensure safety of the injured accused at the hospital.

Office is directed to submit progress medical report by next date of hearing and produce the accused on the same date or earlier if he is allowed to move and travel, as the case may be. The sanction shall be deemed to end as soon as the accused comes in a position to be comfortably produced before this Court and thereon, provisions of section 167, Cr.P.C. shall come into operation.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)

J.M.I
District ABC

APPENDIX III
IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… V/s …… Fuqan s/o Ali

FIR NO.
125/2017 U/S
381/34 P.P.C.
P.S. K

ORDER

Investigating Officer Shabbir of PS KKK in FIR No.125/2017 under section 381/34 P.P.C. has appeared before this Court. He has furnished an application along with copy of FIR referred and has requested that the accused Furqan who is allegedly involved in an FIR No.777/2016 is confined in Central Jail, Karachi who was sent to the judicial custody by the order of this Court is required for investigation and production before concerned Magistrate for the purpose of the remand in FIR No.125/2017, may be allowed to taken out from the jail and produced before the Magistrate accordingly.

I have heard the officer and have gone through the material placed before this Court.

Record shows that the said accused is nominated in the FIR No.125/2017 and it would be needful that he may be produced before the concerned Magistrate for proceedings according to law.

In the given situation, the request of the Investigating officer is allowed with direction that he shall submit the report about the proceeding and date of take out and return of the alleged to the Central Jail, Karachi, accordingly. This permission may be deemed as no objection certificate subject to conditions stated herein.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

ANNEXURE IV

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Noman s/o Mateen
P.P.C.
P.S. HHH

FIR NO. 111/2017 U/S 420

ORDER

Accused Noman is produced by the Investigating Officer Arshad of PS HHH in FIR No.111/2017 under section 420 P.P.C. The police offer has placed a request for granting fourteen days police custody remand of the accused.

I have heard the officer and have gone through the material including diaries placed before this Court. I have also heard the accused in person and so also through this pleader; the accused has not complained of any maltreatment at hands of police.

Record shows that the matter in hand pertains to cheating which is a bailable offence as per second schedule of the criminal procedure code, 1898.

In the given situation, the accused is admitted to bail subject to furnishing solvent surety in sum of Rs.30,000/- with P.R. bond in the like amount to the satisfaction of this Court. In case, the accused fails to furnish the said surety, he shall be sent to judicial custody for want of surety till the time it is furnished.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX V

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Shabana d/o Raheel

FIR NO. 175/2017 U/S 381/34 P.P.C. P.S. HH

ORDER

Accused Shabana is produced by Investigating Officer Arshad of PS HHH in company of lady constable Ayesha in FIR No.175/2017 under section 381/34 P.P.C. The police offer has placed a request for granting fourteen days police custody remand of the accused on the ground that interrogation has yet to be made.

I have heard the officer and have gone through the material including diaries placed before this Court. I have also heard the accused in person and so also through this pleader; the accused has not complained of any maltreatment at hands of police.

Record shows that the accused produced is a woman and the matter in hand pertains to theft which becomes bailable offence for a female accused as per provisions laid down under section 167(5), Cr.P.C.

In the given situation, the accused is admitted to bail subject to furnishing solvent surety in sum of Rs.30,000/- with P.R. bond in the like amount to the satisfaction of this Court. In case, the accused fails to furnish the said surety, he shall be sent to judicial custody in women jail for want of surety till the time it is furnished.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX VI

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Irfan s/o Naveed

FIR NO. 190/2017
U/S. 381/34 P.P.C.
P.S. HHH

ORDER

Accused Irfan is produced by Investigating Officer Arshad of PS HHH in FIR No.190/2017 under section 381/34 P.P.C. The police offer has placed a request for granting fourteen days police custody remand of the accused on the ground that interrogation has yet to be made.

I have heard the officer and have gone through the material including diaries placed before this Court. I have also heard the accused in person and so also through this pleader; the accused has not complained of any maltreatment at hands of police. The counsel submitted the birth certificate of the accused which shows that accused happens to be fourteen years of age.

Record shows that the accused produced as apparent from his physique and the birth certificate produced is a juvenile within the definition of the Juvenile Justice System Ordinance, 2000 and the matter in hand pertains to theft which becomes bailable offence for a juvenile accused as per provisions laid down under section, Juvenile Justice System Ordinance, 2000

In the given situation, the accused is admitted to bail subject to furnishing solvent surety in sum of Rs.30,000/- with P.R. bond in the like amount to the satisfaction of this Court. In case, the accused fails to furnish the said surety, he shall be sent to judicial custody in juvenile jail for want of surety till the time it is furnished.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX VII

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Altaf s/o Naveed
FIR NO. 123/2017 U/S 392/34 P.P.C.
P.S. TUV

ORDER

Accused Altaf is produced in custody by the Investigating Officer / Arresting Officer Omair of PS TUV in FIR No.123/2017 under section 392/34 P.P.C. This is first remand. The police offer has placed a request for granting fourteen days police custody remand of the accused on the ground that interrogation of the accused is still to be effected.

I have heard the officer and have gone through the material including diaries placed before this Court. I have also heard the accused in person and so also through this pleader; the accused has not complained of any maltreatment at hands of police.

Record shows that the matter in hand pertains to robbery yet it is also shown that the crime weapon used to rob the complainant and, the recovery of robbed articles is already effected.

In the given situation, the police officer's request seems unjustified to and is hence, declined for they had sufficient time to interrogate the accused. Accused is therefore, remanded to judicial custody till 20th April, 2017. Investigating Officer is directed to submit report under section 173, Cr.P.C. within stipulated time.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX VIII

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Faraz s/o Raheel

FIR NO. 123/2017 U/S 392/34 P.P.C. P.S. KKK

ORDER

Accused Faraz is produced in custody by the Investigating Officer / Arresting Officer Shahbaz of PS KKK, District Gujranwala in FIR No.123/2017 under section 392/34 P.P.C. The police offer has placed a request for granting transit police custody remand of the accused so that he may be taken to and produced before the concerned Magistrate.

I have heard the officer and have gone through the material including permission from home department placed before this Court. I have also heard the accused in person and so also through this pleader; the accused has not complained of any maltreatment at hands of police.

Record shows that the matter in hand pertains to robbery alleged committed in Gujranwala where the FIR was lodged but accused could not be traced and has now been apprehended in Karachi.

In the given situation, the police officer's request seems justified to the extent of granting the accused to transit police custody remand; and hence, accused is remanded to such police custody for two days. I.O. is directed to produce the accused before the Magistrate according to law under intimation to this Court; and, if in the mean time before reaching the Court for whatever justifiable reasons, the period of remand ends, he shall seek fresh remand from the nearest Magistrate in surroundings for further proceeding.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX IX

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Shan s/o Raheel

FIR NO. 45/2017
U/S 392/34
P.P.C.

ORDER

Accused Shan is produced in custody by the Investigating Officer / Arresting Officer Shahid of PS WWW in FIR No.45/2017 under section 392/34 P.P.C. This is first remand. The police offer has placed a request for granting fourteen days police custody remand of the accused on the ground that recovery has yet to be effected.

I have heard the officer and have gone through the material including diaries placed before this Court. I have also heard the accused in person and so also through this pleader; the accused has not complained of any maltreatment at hands of police.

Record shows that the accused has neither been nominated in FIR nor there is any material available against him on record connecting him with commission of offences. I.O has submitted that he has been arrested out of suspicion which is not a reasonable ground.

In the given situation, the police officer's request does not seem cogent and there is no sufficient reason to curtail the liberty of the accused. He is therefore discharged under section 63, Cr.P.C. subject to furnishing P.R. bond in sum of Rs.50,000/-. The discharge of the accused shall not mean acquittal and I.O. may continue with the investigation, accordingly.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

Appendix X

IN THE COURT OF 1ST CIVIL JUDGE & JUDICIAL MAGISTRATE, DISTRICT ABC

Statement of witness under section 164, Cr.P.C.

Cr. Case NO. 000/2017

FIR No:- 00/2017
U/S:- 365/354 P.P.C
P.S:- XYZ

I do hereby state on oath as under: -

Name: AAA
Religion: Islam
Caste: CCC
Residence: H.NO. 111, Street 222, District ABC.
Dated: 06.04.2017

Father Name: BBB
Age: 64 Years
Occupation: Teaching

To Court:

مورخہ ۱۴ فروری ۲۰۱۷ء کو میں معمول کے مطابق ناشتے کے لئے گھر سے باہر نکلا تو باہر میں نے شور شرابے کی آوازیں سنیں اور دیکھا کہ دو خواتین چیخ رہی تھیں۔ سامنے ایک سفید کرولا کار کھڑی تھی اور تین مسلح افراد ان دو خواتین کو گھسیٹ کے گاڑی میں بٹھا رہے تھے۔ جیسے ہی میں آگے بڑا تب تک وہ خواتین گاڑی میں بیٹھ چکی تھیں اور وہ افراد گاڑی وہاں سے کہیں لے گئے۔ میں نے یہ بیان دیا ہے۔

CROSS EXAMINATION TO WITNESS ON BEHALF OF ACCUSED THROUGH LEARNED ADVOCATE MR PQR

سوال نمبر ۱ :- جو لوگ آپ بتا رہے ہیں کیا وہ پولیس وا
تھے ؟

جواب :- وہ سول ڈریس میں تھے۔ میں نہیں کہہ سکتا
وہ پولیس والے تھے یا نہیں

سوال نمبر ۲ :- کیا یہ درست ہے کہ آپ ان گواہین
کو نہیں پہچان سکتے کیونکہ وہ پردے میں تھیں ؟

جواب :- اس وقت انکے چہرے کھلے ہوئے تھے اور
میں انکو پہچان سکتا ہوں

سوال نمبر ۳ :- آپ کے اور ان کے گھر میں کتنا فا
ہے ؟

جواب :- ہم ایک ہی گلی میں رہتے ہیں۔

سوال ۴ :- میرا کہنا ہے کہ آپ جھوٹا بیان دے
رہے ہیں ؟ کیا یہ بات درست ہے ؟

جواب :- نہیں۔

CERTIFICATE

This is to certify that the statement u/s 164, Cr.P.C. of the witness AAA s/o BBB was recorded in my presence, hearing and under my hand. It is recorded in full and in the language of the deponent, in presence of the accused who was given opportunity to cross-examine the witness. Accuse cross-examined him through Advocate. The record was made comfortable to the witness and was read over to him. He understood and acknowledged it and thus, signed / thumb-impressed it. The record contains correct and true account of the statement, to the best of my knowledge.

WITNESS

J.M. I, ABC

Appendix XI

IN THE COURT OF 1ST CIVIL JUDGE & JUDICIAL MAGISTRATE, DISTRICT ABC

Confession of Accused under section 164, Cr.P.C.

Particulars

The accused Syed Muneeb Ali S/o Syed Irshad Ali is produced in custody by investigating Officer (I.O.) SIP Ali Khan Vide F.R No. 09/2017 U/s 302/379/109, P.P.C of Police Station TUV, District ABC, before me at my Court today, i.e. 05.04.2017 at 11:00 pm. To have his confession recorded, an application for such recording has been placed by the I.O. which is attached with record. The accused as per record was arrested vide aforesaid crime on 04.04.2017 while the alleged offence as per F.I.R is said to have committed on 18.03.2017 at 1600 hours.

Precautions

Before recording any such confession, the accused has been explained that he is not bound to make a confession and, that if he does so it may be used in evidence against him. Fear of the accused must be removed. He has been removed from the custody of the police who brought him for the purpose. His handcuffs had been removed (applicable if he is in handcuffs). It is made sure that no policeman concerned with investigation of the relevant case, is present in the Court or the place where proceeding could be heard or seen. The accused is informed that he is no longer in police custody and, that he is appearing before a Magistrate who has no concern with the police. He is explained that he is not bound to make a confession and, if he does so, it will be taken down in writing and may be thereafter used as evidence against him. He is then given two hours of time for reflection; and, during this time, the investigating police has not been allowed to have access to him. In order to satisfy himself as to whether the confession is voluntarily made or not, the undersigned put following questions to the accused, prior to recording of such confession; such questions and answers are written herein in the language (Urdu), the accused spoke, and verbatim of the accused:

سوال نمبر ۱ :- کیا تم جانتے ہو کہ میں مجسٹریٹ ہوں اور یہ عدالت ہے؟

جواب :- جی ہاں۔

سوال نمبر ۲ :- کیا تم جانتے ہو اور سمجھتے ہو کہ یہاں سے اب تمہیں پولیس کی تحویل میں واپس نہیں بھیجا جائے گا۔ تمہیں چاہیے تم بیان دو یا نہ دو۔

جواب :- جی ہاں۔

سوال نمبر ۳ :- یہاں تم کیا بیان دینے آئے ہو؟

جواب :- اقبالِ جرم کا بیان۔

سوال نمبر ۵ :- جو بیان تم دو گے وہ تمہارے خلاف استعمال ہو سکتا ہے، کیا تم یہ بات سمجھتے ہو؟

جواب :- جی ہاں۔

سوال نمبر ۶ :- تم کب سے پولیس کی حراست میں ہو اور تمہیں کب گرفتار کیا گیا؟

جواب :- دو دن پہلے۔

سوال نمبر ۷ :- تمہیں ایسا کیوں محسوس ہوا کہ تمہیں عدالت میں اقبال جرم کرنا چاہیے؟

جواب :- یہ بات کل میرے ذہن میں آئی۔

سوال نمبر ۸ :- تم یہ بیان کس کے کہنے پر دے رہے ہو؟

جواب :- مجھے ایسا کرنے کو پولیس نے کہا ہے۔

سوال نمبر ۹ :- پولیس نے آپ سے کیا کہا ہے؟

جواب :- پولیس نے بتایا اگر اقبال جرم کرو گے تو سزا کم ملے گی۔

سوال ۱۰ :- تو آپ یہ بیان اپنی مرضی سے نہیں دے رہے؟

جواب :- نہیں ایسا کرنے کو کہا گیا ہے۔

ORDER

The account above is recorded in language of the deponent. The answers to Questions numbered 07 to 09 are clear to infer that confession to be made was not voluntary. In view of Section 164(3), Cr.P.C., the request for recording confession of the accused is declined. For purpose of remanding the accused to judicial custody, orders may be referred to application u/s 167 Cr.P.C.

Magistrate

Appendix XII

IN THE COURT OF 1ST CIVIL JUDGE & JUDICIAL, MAGISTRATE, DISTRICT ABC

Confession of Accused under section 164, Cr.P.C.

Particulars

The accused Syed Mumeeb Ali S/o Syed Irshad Ali is produced in custody by Investigating Officer (I.O.) SIP Ali Khan Vide FIR No. 00/2017 U/s 302/370/109, P.P.C. of Police Station TUV, District ABC, before me at my Court today, i.e. 06.04.2017 at 12:00 pm. To have his confession recorded, an application for such recording has been placed by the I.O. which is attached with record. The accused as per record was arrested vide aforesaid crime on 04.04.2017 while the alleged offence as per F.I.R is said to have committed on 18.03.2017 at 1600 hours.

Precautions

Before recording any such confession, the accused has been explained that he is not bound to make a confession and, that if he does so it may be used in evidence against him. Fear of the accused must be removed. He has been removed from the custody of the police who brought him for the purpose. His handcuffs had been removed (applicable if he is in handcuffs). It is made sure that no policeman concerned with investigation of the relevant case, is present in the Court or the place where proceeding could be heard or seen. The accused is informed that he is no longer in police custody and, that he is appearing before a Magistrate who has no concern with the police. He is explained that he is not bound to make a confession and, if he does so, it will be taken down in writing and may be thereafter used as evidence against him. He is then given two hours of time for reflection; and, during this time, the investigating police has not been allowed to have access to him. In order to satisfy himself as to whether the confession is voluntarily made or not, the undersigned put following questions to the accused, prior to recording of such confession; such questions and answers are written herein in the language (Urdu), the accused spoke; and verbatim of the accused:

سوال نمبر1:۔ کیا تم جانتے ہو کہ یہ حوالات ہے اور میں مجسٹریٹ ہوں؟

جواب :۔ جی ہاں

سوال نمبر2:۔ کیا تم جانتے ہو اور سمجھتے ہو کہ یہاں سے اب
تمہیں پولیس کی حراست میں واپس نہیں بھیجا جائیگا۔
اگر چاہے تم بیان دو یا نہ دو؟

جواب :۔ جی ہاں۔

سوال نمبر3:۔ یہاں تم کیا بیان دینے آئے ہو؟

جواب :۔ اقبالِ جرم کا بیان

سوال نمبر ۳: بیان جو تم دو گے وہ تمہارے خلاف استعمال ہو سکتا ہے۔ کیا تم یہ بات سمجھتے ہو؟

جواب: جی ہاں۔

سوال نمبر ۴: تم کب سے پولیس کی حراست میں ہو اور تمہیں کب گرفتار کیا گیا؟

جواب: دو دن پہلے۔

سوال نمبر ۵: تمہیں ایسا کب محسوس ہوا کہ تمہیں عدالت میں اقبال جرم کرنا چاہیے؟

جواب: یہ بات کل میرے ذہن میں آئی۔

سوال نمبر ۶: تم اقبال جرم کیوں کر رہے ہو؟

جواب: میں نے غصے کے طیش میں آ کر قتل کیا وہ ہمارا جاننے والا تھا اور چونکہ اس کا ہماری ~~[illegible]~~ زمین پر قبضہ تھا جو کہ بہت منتوں سماجت کے بعد بھی نہیں چھوڑ رہا تھا۔ اور ہمارے درمیان واقع والے دن ہاتھا پائی ہو گئی جو کہ آگے قتل میں تبدیل ہو گئی۔ اب مجھے اس بات پر افسوس ہے۔

سوال نمبر ۷: کیا تم یہ بیان اپنی مرضی سے اور بنا کسی زور زبردستی سے دے رہے ہو؟

جواب: جی ہاں مجھ پہ کوئی زور زبردستی نہیں۔

بیان

18 مارچ 2017 کو شام 4 بجے میں اپنی زمین پر گیا جہاں
منیب بھی موجود تھا۔ منیب کے ساتھ اور چار ساتھی
موجود تھے۔ میں نے منیب سے کہا کہ میری زمین پر سے قبضہ
چھوڑ دو اور مجھے میری زمین واپس کر دو۔ جس پر اس
نے انکار کر دیا۔ بات گالی گلوچ تک آ گئی اور پھر میں
نے اس پر فائر میں اس کو ٹانگ پر مارا۔ جواباً اس
نے اپنے پاس میں موجود ہتھوڑے کے پشت سے مجھ پر
وار کیا اور پھر میں نے اپنی جیب میں رکھے پستول سے
اس پر گولی چلا دی۔ اور وہاں سے بھاگ گیا۔ بعد میں
معلوم ہوا کہ اس کے ساتھی اسے ہسپتال لے گئے لیکن اس کی
جان نہ بچ سکی۔ یہی میرا بیان ہے اور بلا کسی زبردستی کے ہے۔

CERTIFICATE

I have explained to Syed Mazar that he is not bound to make a confession and that, if he does so, any confession he may make be used as evidence against him and I believe this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

DEPONENT/ACCUSED/CONFESSOR

J.M.I, ABC

APPENDIX XIV

IN THE COURT OF JUDICIAL MAGISTRATE, I, DISTRICT ABC

BEFORE: ***MR. XYZ***

B. A. No: /2017

Suleman……Applicant/Accused

Versus

The State……Respondent

FIR No. 25/2017 U/s. 354 PPC PS. KKK

Miss. ZZZZ Advocate for applicant/accused Mr. MMM ADPP for state

ORDER

Accused Qurban is brought in custody by the Investigating Officer / Arresting Officer Shahid of PS WWW in FIR No.25/2017 under section 354 P.P.C.

I have heard the officer and have gone through the material including diaries placed before this Court. I have also heard the accused in person and so also through this pleader.

Record shows that the alleged offence under section 354, P.P.C. is bailable as per second schedule of the code of criminal procedure, 1898.

In the given situation, the accused is admitted to bail subject to furnishing solvent surety in sum of Rs.30,000/- with P.R. bond in the like amount to the satisfaction of this Court. In case, the accused fails to furnish the said surety, he shall be sent to judicial custody for want of surety till the time it is furnished.

Pronounced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XV

IN THE COURT OF JUDICIAL MAGISTRATE, I, DISTRICT ABC

BEFORE: ***MR. XYZ***

B. A. No: /2017

Nizam……. Applicant/Accused

Versus

The State……Respondent

FIR No. 35/2017 U/s. 328 PPC PS. GGG

Miss. ZZZZ Advocate for applicant/accused Mr. MMM ADPP for state

ORDER

By this order, I intend to dispose of bail application filed by the learned Advocate for the accused Nizam. The application was noticed to prosecution.

I have heard the learned Advocate for the accused and the learned Assistant District Public Prosecutor.

The learned Advocate for the accused mainly submitted that ……..

The learned Assistant District Public Prosecutor opposed the application and mainly argued that ……..

I have not only paid patient hearing to both sides but also have anxiously gone through the material placed before this Court.

Record shows that the alleged offence under section 382, P.P.C. does not fall within prohibitory clause of section 497, Cr.P.C. Accused has been sent to judicial custody and is no more required for further investigation, and challan has been submitted. Besides, no serious impediment appears to prevent accused from being admitted to bail.

APPENDIX XVI

IN THE COURT OF JUDICIAL MAGISTRATE, I, DISTRICT ABC

BEFORE: ***MR. XYZ***

B. A. No: /2017

Nazim……Applicant/Accused

Versus

The State……Respondent

Miss. ZZZZ Advocate for applicant/accused Mr. MMM ADPP for state
FIR No. 29/2017 U/s. 411/468 PPC PS. QQQ

ORDER

By this order, I intend to dispose of bail application filed by the learned Advocate for the accused Nazim. The application was noticed to prosecution.

I have heard the learned Advocate for the accused and the learned Assistant District Public Prosecutor.

The learned Advocate for the accused mainly submitted that ……..

The learned Assistant District Public Prosecutor opposed the application and mainly argued that ……..

I have not only paid patient hearing to both sides but also have anxiously gone through the material placed before this Court.

Record shows that the alleged offence under sections 411/468, P.P.C. does not fall within prohibitory clause of section 497, Cr.P.C. Accused was arrested on January 06, 2016 and sent to judicial custody on January 22, 2016 while charge was framed on February 15, 2016. However, trial of the

accused has not concluded till now.

In the given situation, the accused is admitted to bail subject to furnishing solvent surety in sum of Rs.50,000/- with P.R. bond in the like amount to the satisfaction of this Court. In case, the accused fails to furnish the said surety, he shall be sent to judicial custody for want of surety till the time it is furnished.

Pronounced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XVII

IN THE COURT OF JUDICIAL MAGISTRATE, I, DISTRICT ABC

BEFORE: ***MR. XYZ***

B. A. No: /2017

Suleman……..…… …….Applicant/Accused

Versus

The State…….…… ……Respondent

FIR No. 89/2017 U/s. 392 PPC PS. LLL

Miss. ZZZZ Advocate for applicant/accused Mr. MMM ADPP for state

ORDER

By this order, I intend to dispose of bail application filed by the learned Advocate for the accused Nizam. The application was noticed to prosecution.

I have heard the learned Advocate for the accused and the learned Assistant District Public Prosecutor.

The learned Advocate for the accused mainly submitted that ……..

The learned Assistant District Public Prosecutor opposed the application and

mainly argued that ……..

I have not only paid patient hearing to both sides but also have anxiously gone through the material placed before this Court.

Record shows that the alleged offence under section 392, P.P.C. does not fall within prohibitory clause of section 497, Cr.P.C. Accused is sent to judicial custody and is no more required for further investigation. Challan is submitted.

Record further shows that FIR was lodged with inordinate delay of about three months; the accused has not been nominated in FIR; no identification parade was conducted before the Court; and, the complainant had not shown the source through which he came to know about involvement of the present accused in the alleged offence.

For what has been observed above, it calls for the case of further inquiry. And, in the given situation, the accused is admitted to statutory bail in terms of clause (a) of the third proviso of section 497, Cr.P.C. subject to furnishing solvent surety in sum of Rs.50,000/- with P.R. bond in the like amount to the satisfaction of this Court. In case, the accused fails to furnish the said surety, he shall be sent to judicial custody for want of surety till the time it is furnished.

Pronounced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XVIII

IN THE COURT OF JUDICIAL MAGISTRATE, I, DISTRICT ABC

BEFORE: ***MR. XYZ***

B. A. No: /2017

Nizam……..…

…….Applicant/Accused Versus

The State……..……
……Respondent

FIR No. 22/2017
U/s. 420/468/471
PPC PS. KKK

Miss. ZZZZ Advocate for applicant/accused Mr. MMM ADPP for state

ORDER

By this order, I intend to dispose of bail application filed by the learned Advocate for the accused Nizam. The application was noticed to prosecution.

I have heard the learned Advocate for the accused and the learned Assistant District Public Prosecutor.

The learned Advocate for the accused mainly submitted that ……..

The learned Assistant District Public Prosecutor opposed the application and

mainly argued that ……..

I have not only paid patient hearing to both sides but also have anxiously gone through the material placed before this Court.

Record shows that it is second bail application. The previous application was dismissed on account of being premature prior to submission of challan. Now, challan has been submitted and the investigation has called for further inquiry into guilt of the accused since his involvement is not totally connecting the offence of forgery as alleged in the present case; he is rather shown as suspected one. The alleged offence under sections 420/468/471, P.P.C. does not fall within prohibitory clause of section 497, Cr.P.C. Accused is sent to judicial custody and is no more required for further investigation.

Record further shows that FIR was lodged with inordinate delay of about three months; the accused has not been nominated in FIR; no identification parade was conducted before the Court; and, the complainant had not shown the source through which he came to know about

involvement of the present accused in the alleged offence.

For what has been observed above, it calls for the case of further inquiry. And, in the given situation, the accused is admitted to statutory bail in terms of clause (a) of the third proviso of section 497, Cr.P.C. subject to furnishing solvent surety in sum of Rs.50,000/- with P.R. bond in the like amount to the satisfaction of this Court. In case, the accused fails to furnish the said surety, he shall be sent to judicial custody for want of surety till the time it is furnished.

Pronounced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XIX

IN THE COURT OF JUDICIAL MAGISTRATE, I, DISTRICT ABC

BEFORE: ***MR. XYZ***

B. A. No: /2017

Nizam……..…

…….Applicant/Accused Versus

The State……..……
……Respondent

FIR No. 22/2017 U/s. 382/34 PPC PS. KKK

NOTICE TO SURETY ON BREACH OF A BOND

Whereas on the 15th of March, 2017 you became surety for the accused named above that he should make the accused appear before this court on each and every date of hearing and bound yourself in default thereof to forfeit the sum of Rs.50,000/- to Government of Pakistan and whereas the said accused has/have failed to appear before this court and by reason of such default, you have forfeited the aforesaid sum of rupees.

You are hereby required to pay the said penalty or show cause, within _____days, why payment of the said sum should not be enforced against you.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XX

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2016

The State …… Vs ……. Aleem s/o Naveed

FIR NO. 162/2015
U/S 392/341/34 P.P.C.
P.S. YYYYY

Order Under Section 497 Cr.P.C.

By this order, I intend to dispose of the instant bail application filed in the above matter by the learned Advocate on behalf of the accused. The case pertains to alleged wrongful restraint of complainant and his companion within ambit of Section 341, P.P.C. and so also, of robbery within ambit of Section 392, P.P.C.

Notice was extended to prosecution.

I have paid patient hearing to the learned counsel for the accused as well as the State.

The learned counsel for the accused mainly reiterated the grounds incorporated in the bail application, while he also added that ……

The learned ADPP on the contrary opposed the application on ground of severity of offence.

Record shows that on 26-11-2015 at 1600 hours, the complainant and his cousin wrongfully restrained by three armed persons. The

complainant recognized them and nominated them with specific role in the First Information Report (F.I.R.). The present accused robed on gun point the complainant of his motor bike, a mobile set and cash amount of Rs. 2500/-. Co-accused robs the companion / cousin of complainant of Rs.1500/-. The complainant got FIR lodged within three hours, at
1900 hours, of the incident. Within half hour, at 1930 hours, I.O. left in company of the complainant and police party vide entry no. 24 for investigation. They went to place of incident. The accused were arrested immediately, within few hours of FIR.

It follows that the delay of three hours in lodging of FIR does not become substantial when we sense the fear arisen among the victims and followed by legal formalities in lodging of FIR. Even otherwise, the delay in lodging the FIR in such cases is a common phenomenon and may be ignored at times, when the accused is apparently seen to have been connected with the offence.

Falling under non-prohibitory clause of section 497(1) Cr.P.C. does not make an offence bailable; it is not a rule of universal application and each case has to be decided on its own facts and circumstances (Ref. 2009 P.Cr.L.J. 1140).

This whole follows that there is prima facie sufficient material available at this stage connecting the present accused with the commission of alleged heinous offence.

It is further observed that the entire jurisprudence of criminal administration suggests that Code of Criminal Procedure has an objective to foster the administration of justice in its best interest. It is maintained that the law would fail to protect the community if it admitted fanciful possibilities to

deflect the course of justice.

Hence, I find that there are *prima facie* reasonable grounds existing to believe that the accused has connection with the alleged offence, and hence the instant bail application may be rejected; I rely upon 1998 P.Cr.L.J. 1514.

For what has been observed above, it comes to my humble understanding that the instant case is not fit for grant of bail at this stage. I therefore, find myself constrained to decline the instant bail application.

The above observations are tentative in nature and may not affect the merits of the case in future.

The application is disposed of, accordingly.

Pronounced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XXI

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Kamal /o Naveed

FIR NO. 99/2017
U/S 392/34
P.P.C.
P.S. KKK

ORDER

Investigating Officer Shahbaz of PS KKK in FIR No.99/2017 under section 392/34 P.P.C. has appeared before this Court with report under section 173, Cr.P.C. of the instant FIR for disposal of the same in "A" class.

I have heard the officer and have gone through the material including diaries placed before this Court.

Record shows that the accused after committing alleged offence of robbery fled away and despite strenuous and serious efforts taken by the I.O., he could not be traced and arrested.

In the given situation, the instant report is hereby disposed of in "A" class on account of intractability of the accused in the case, as prayed. I.O. is directed to continue with the investigation and submit report as and when substantial progress is effected.

Announced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XXII

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Aftab s/o Zahid

FIR NO. 39/2017
U/S. 380/34 P.P.C.
P.S. L

ORDER

Investigating Officer Shahbaz of PS LTU in FIR No.39/2017 under section 380/34 P.P.C. has appeared before this Court with report under section 173, Cr.P.C. of the instant FIR for disposal of the same in "B" class.

A show because notice was issued to the complainant to appear and show cause as to why the report should not be disposed of in "B" class; as the case is found to be false one.

I have heard the officer, and the complainant, and have gone through the material including diaries placed before this Court.

The Investigating Officer submitted that …….

On the contrary, the complainant made his submissions stating that …….

Record shows that the complainant got FIR lodged against his neighbour Sultan alleging an offence of theft against him. After due investigation, I.O. came to conclude that the offence had not been committed and a false case was registered. The complainant also could not satisfy this Court as to why matter should not be disposed of in "B" class, being false one. In the given situation, the instant report is hereby disposed of in "B" class on account of the case being false one, as prayed. Let the order be sent to the S.H.O. of the Police Station, concerned.

Announced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XXIII

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs ……. Zameer s/o Naveed

FIR NO. 47/2017
U/S 188 P.P.C.
P.S. BWR

ORDER

Investigating Officer Shahbaz of PS BWR in FIR No.47/2017 under section 188
P.P.C. has appeared before this Court with report under section 173.

I have heard the officer, and the complainant, and have gone through the material including diaries placed before this Court.

The Investigating Officer submitted that …….

Record shows that the FIR was lodged against the accused for an offence under section 188 P.P.C. but no complaint was filed from the public servant concerned or any other public servant to whom he is subordinate which is mandatory requirement of law under section 195 (a), Cr.P.C. in such like offences. The said provision bars this Court from taking cognizance of said offence in absence of direct complaint from officers referred here.

In the given situation, the instant report is hereby disposed of in "C" class on account of bar contained in section 195 (a), Cr.P.C. Let the order be sent to the S.H.O. of the Police Station, concerned.

Announced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XXIV

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Ali s/o Naveed

FIR NO. 37/2017
U/S 392/34
P.P.C.
P.S. BXR

ORDER

Investigating Officer Shahbaz of PS BXR in FIR No.37/2017 under section 392/34 P.P.C. has appeared before this Court with report / charge sheet under section 173.

I have heard the officer, and the complainant, and have gone through the material including diaries placed before this Court.

The Investigating Officer submitted that …….

Record shows that there is every material available including statements of prosecution witnesses and other evidence on record *prima facie* connecting the accused with the commission of offence, alleged.

In the given situation, let the charge sheet / report be accepted. Register the case, accordingly.

Announced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XXV

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Siddique s/o Ameen

FIR NO. 38/2017
U/S 392/34
P.P.C.
ORDER **P.S. BXR**

Investigating Officer Shahbaz of PS BXR in FIR No.38/2017 under section 392/34 P.P.C. has appeared before this Court with report under section 173 wherein
I.O. has recommended for release of accused Siddique on account of lack of sufficient evidence against him.

I have heard the officer, and the complainant, and have gone through the material including diaries placed before this Court.

The Investigating Officer submitted that …….

Record shows that the accused Siddique was not nominate din FIR and was only suspected later and that also, the complainant alleged him in a deliberate subsequent statement on a mere suspicion. There is no other material connecting him with the offence, available on record. However, there is material available against nominated accused connecting them with alleged offence.

In the given situation, I.O's request found cogent is accepted. Accused Siddique is hereby released under section 169, Cr.P.C. while cognizance is taken against rest of the accused.

Announced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XXVI

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Raheel s/o Naveed

FIR NO. 162/2015
U/S 392/34 P.P.C.
P.S. YYYYY

Supply of Statements and documents u/s 241-A, Cr.P.C.

Accused Raheel s/o Naveed in the instant case is hereby supplied free of cost seven days (at least) before framing of charge), copies of the following documents / scientific evidence; receipts of which is acknowledged below:

(a) Copies of statements of all witnesses recorded u/s 161, Cr.P.C. by I.O.
(b) Copies of statements of witnesses recorded u/s 164, Cr.P.C. by Magistrate (if any).
(c) Memorandum / note of inspection of place of occurrence
(d) Police report and documents forwarded by I.O.
(e) USBs and CDs prepared during investigation (if any).

Given under hand and seal of this Court, on this 06th April, 2017.

_____

Signature / Thumb impression of accused

(XYZ)
J.M.I
District ABC

APPENDIX XXVII

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Pvt. Complaint No. /2017

Majid s/o Azhar …… Vs …… Majid s/o Roshan

U/S 506-B P.P.C.
P.S. YYYYY

ORDER

By this order, I intend to decide taking cognizance or otherwise of the direct complaint in hand by filed by the complainant Rasheed against accused Majid under section 506-B P.P.C.

I had opportunity to conduct preliminary inquiry during which complainant produced his witnesses and their statements were recorded before this Court.

All witnesses substantiated the version of the complainant.

In the given situation, cognizance is hereby taken against the accused nominated. Issue summons to the accused to appear before this Court on …….. for further proceedings.

Announced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XXVIII

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Pvt. Complaint No. /2017

Akbar s/o Suleman …… Vs …… Saleem s/o Ehsan

U/S 500P.P.C.
P.S. YYYYY

ORDER

Complainant Akbar has appeared along with his counsel and has submitted a direct / private complaint against accused Saleem, the contents of which reveal that the alleged offence falls within definition of defamation as given under section 499, P.P.C. The punishment of the said offence is provided under section 500, P.P.C. As per second schedule of the Cr.P.C., the same is triable by the honourable Court of Sessions.

Therefore, in terms of section 200 (a), Cr.P.C., let the matter be sent to the Hon'ble Court of Sessions for deciding about the taking of cognizance or otherwise or as the Hon'ble Court may deem fit.

Announced in open Court.

Given under hand and seal of this Court, on this 06th April, 2017.

(XYZ)
J.M.I
District ABC

APPENDIX XXIX

Ex.2

IN THE COURT OF IST JUDICIAL MAGISTRATE, DISTRICT ABC

Crl. Case No. /2017

The State …… Vs …… Shabbir s/o Waseem

FIR No. 16/2017
U/S. 392 P.P.C.
P.S. YYYYY

CHARGE UNDER SECTION 242, Cr.P.C.

I, XYZ, the Judicial Magistrate I, District ABC, do hereby charge you Siraj s/o Khalid, the accused, as under,

That you the above-named accused, on or about 3rd day of March, 2017 at about 02 pm, committed robbery of a wallet in red color of jafferjees company in which there a cash number of rupees thirty thousand in different denominations which was the property of Zubair and was then in his possession and was robbed by you in street No. 10, Gulshan e Faisal, bath is land, Clifton, Karachi; and thereby committed an offence punishable under section 392, Pakistan Penal Code within my cognizance.

And I hereby direct that you be tried on the said charge by me.

(XYZ)
J.M.I
District ABC

[i] **Zafar Iqbal Kalanauri**, Advocate Supreme Court of Pakistan, Arbitrator, Mediator , Adjunct Faculty of Law at SAHSOL, Lahore University of Management Sciences (LUMS), SAF Centre, #3 3rd Floor, 8-Fane Road Lahore 54000, Pakistan. Cell: (92) 300- 4511823 E-mail:kalanauri@gmail.com ; Web: http://www.zklawassociate.com