

POLICE CIRCULAR ORDER NO. 213 OF 1974

SUBJECT—Implementation of the new Criminal Procedure Code, 1973.

The Criminal Procedure Code, 1973 shall come into force with effect from 1-4-1974. It may take some time for copies of the new code to reach all districts and Police posts. Therefore, certain salient features of the new code concerning the Police, are given below for information of all Police personnel, along with necessary instructions and guidelines to ensure a smooth changeover from the old practice and procedure to the new as prescribed in the amended Cr. P. C. The decisions of the Government on the Proposals submitted by the Police Department (Orissa) regarding the implementation of the new Cr. P.C. is still awaited. Further instructions will be issued on receipt of Government orders.

The changes brought about in the new Cr.P.C. necessitate large scale revision of the Police Manual which would take some time. In case of immediate problems cropping up in the implementation of the new code the District Superintendents of Police should be consulted, who in turn may refer the matter to the Crime Branch. The District Superintendent of Police including S.R.V. and Superintendent of Police, Rourkela, shall submit separate monthly reviews on the implementation of the new Cr.P.C. from May 1874 onwards mentioning therein the difficulties and problems faced by them along with their suggestion for remedy, if any. These reviews shall reach the Crime Branch along with the monthly crime reviews. The Range D.Is. G. may offer their views on such reviews separately and send those to the Crime Branch for necessary action.

Section 2 (d) Complaint

(Old Code Section 4 (h) Cr. P.C.)

"*Explanation*—A report made by a Police Officer in a case which discloses, after investigation, the commission of a non-cog. offence shall be deemed to be a complaint, and the Police Officer by whom such report is made shall be deemed to be the complainant."

Therefore in all cases returned by the Police as Final Report Non-Cog., the Magistrate may take cognizance on the F.I.Rs., without the need for the informant to file a separate complaint in the Court. In such cases the accused is entitled to get the copies of relevant Police papers and the State shall prosecute the cases.

The procedure of submission of F.Rs. will continue as at present. But in cases ending in F.R. Non-Cog. names of witnesses will have to be mentioned in the P.M. Form 33 (Final Report) and additional copies of the same prepared for the accused persons by the Police, till the Courts are staffed to undertake the work.

Section 2 (P) Place

Old Section 4 (q)

"Place includes a house, building, tent, vehicle and vessel"

Please note that according to the new definition the place also includes a "vehicle".

Section 2 (r) (POLICE REPORT)

Means a report of a Police Officer to a Magistrate under section 173 (2) Cr.P.C.

This is a new provision in Cr.P.C. All other report by Police Officer (excepting these under Section 173 Cr.P.C.) such as non-F.I.R., P.Rs., will now be treated as complaints. Each accused is entitled to get a set of copies of such complaint vide Section 204 (3) of the New Code. These copies will be prepared by the Police till the Magistrates are staffed to take up the work (see instructions on Section 207, 208 and 209).

Section 2 (x) (WARRANT CASE)

Old Code Section 4 (w)

Now warrant case relate to offences punishable with imprisonment exceeding two years. Previously it was used to be one year. Therefore offences punishable with imprisonment for a term not exceeding two years shall be tried by Summons case procedure.

Section 3 Cr. P. C.

A Magistrate, in the new Cr.P.C., means a Judicial Magistrate and a Magistrate referred to in other Act also would mean a Judicial Magistrate unless there is a qualifying word or the context means otherwise. According to Sub-Section (4) where the context refer to action or orders for punishments, penalty, detention in custody, inquiry, trial or committal, the Magistrate empowered would mean a Judicial Magistrate; and where the context refer to matter which are administrative or executive in nature, like grant suspension or cancellation of licence, sanction of P.R., or withdrawal from prosecution, the Magistrate empowered would normally mean an Executive Magistrate.

CHAPTER II

(Constitution of Criminal Courts and Officers)

Section 6 Cr. P.C. Classes of Criminal Courts

(Old Code Section 6 Cr. P.C.)

7. There are no 3rd Class Magistrate now. There are two kinds of Magistrates, Judicial (1st and Second Class) and Executive Magistrates.

Section 20—Executive Magistrates :

The Executive Magistrate in-charge of a Subdivision shall be the S.D.M. who is to be appointed by the State Government .

This Section is a combination of sections 10,11,and 13 of the old code.

Section 25—Assistant Public Prosecutor :

(1) The State government shall appoint in every district one or more Assistant Public Prosecutor for conducting Prosecutions in the Court of Magistrates.

(2) Save as otherwise provided in sub-section (3), no Police officer shall be eligible to be appointed as a Assistant Public Prosecutors.

(3) Where no Assistant Public Prosecutor is available for the purpose of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a Police Officer shall not be appointed.

(a) if he had taken any part in the investigation into the offence with respect to which the accused is being prosecuted, or

(b) if he is below the ranks of Inspector.

According to this section, Officer of the ranks of Inspectors of Police may conduct specific case on being authorised by the District Magistrates. They may also continue to conduct cases taken cognizance of prior to 1-4-74 under section 484 Cr.P.C. read with Section 302 Cr.P.C. occurs in chapter 24 of the new Code dealing with "General Provision as to Inquiries and Trials". Since prosecution is a part of trial, the repeal and savings clause vide section 484 Cr.P.C., which mention about trials, may be construed to mean and include the prosecutions during trial. The Court may be moved to permit C.S.Is. even to conduct prosecutions in cases pending Trial in the Courts of Magistrates on 1-4-1974 as per Section 484 Cr.P.C. If the Courts do not agree, then the prosecutions will have to be conducted by the P.I. and A.P.Ps. of the Police Department. If the Court will not accept our A.P.Ps. as A.p.Ps. under the new Code. they (the A.P.Ps.) can be treated as Inspectors of Police under section 25 or 302 Cr.P.C. and used for prosecution work.

Prosecution in Courts of Executive Magistrates under the Preventive Section of Law (Sections 107, 133, 144, 145, 147 Cr.P.C.) may be conducted by the Police A.P.Ps., P.Is. C.S.Is., and C.A.S.Is., if posted in charge of court officer, in view of Section 25 read with Section 3 Cr.P.C.

Steps are being taken by the State Government for appointment of A.P.Ps. soon. Initially, recruitment may be made from the Bar, on a temporary basis. Therefore all document handed over to them for the purpose of prosecution shall be done under acknowledgement. A separate book should be opened in such court office to record the name of A.P.P., the G.R. reference, the date and details of records handed over with properties, if any, signature of A.P.P., date of return of properties and documents, date and A.P.P. attends the courts in connection with the particular case and remarks, if any.

The question of withdrawing the Court staff does not arised immediately. The Court Officer will continue to be in charge of G.R., Malkhana, Hazat and P.R. work etc. as before, till Government frame rules or issue instructions in this regard.

CHAPTER-III(POWER OF COURTS)

Section 27—Jurisdiction in the case of Juveniles :

Section 29-B of the Old Code)

Juveniles (below 16 years) are to be tried by the Chief Judicial Magistrate of a Special Magistrate, appointed under the Childrens Act, 1960 (Act 60/60) or any other law provided for treatment, training and rehabilitation of young offenders.

New Section 29

Sentence	Old Code	New Code
Chief Judicial Magistrate.	2 Years Fine Rs. 2,000	7 years No fine limit
Magistrate 1st Class	2 years Fine Rs. 2,000	3 years Fine Rs. 5,000
Magistrate IIInd Class	6 months Fine Rs. 500	1 year Fine Rs. 1,000

Section 37 to Section 40 Cr. P. C. :

Old Code Sections 42,43,44 and 45 Cr. P. C.

In Section 39 of the new code which corresponds to Section 44 of the old code, the following new section T.I.T.C. have been added, fixing responsibility on the members of the public to furnish information to the Magistrate.

Magistrate and Police (Sections 161 to 165, 272 to 278 , 409, 431, 434, 437—439, 489-E I.P.C.)

**CHAPTER V : ARREST OF PERSONS, SECTION 41
Old Code Section 84 (1) and 55 (1)**

A Police Officer may arrest without warrant, on the requisition of another Police Officer, whether written or oral, as per Sub-section (1) (i).

Section 45 Cr. P.C.

According to Sub-section (1) personnel of the Armed forces cannot be arrested for anything done in the discharge of their official duties without the consent of the Central Government. This is a new provision.

Sub-section (2) provides for such protection from arrest to members of the Force charged with the maintenance of Police order, as may be specified by the State Government by notification, wherever they may be serving. The State Government has been moved to issue notification to protect the members of the Police Force, O.M.P., Home Guards, Civil Defence personnel of the State and Police forces or such other Military, Paramilitary of Special Armed Force of the Centre or of any other States of the Indian Union, while engaged in duties for maintenance of public order. [See also Section 197 (3) Cr.P.C.].

Section 50 Cr. P.C.

A person arrested without warrant is to be informed of the grounds of arrest immediately. When the arrest is made for a bailable offence the Police Officer must inform the arrested person to arrange sureties to be released on Police Bail. This is entirely a new provision in Cr.P.C.

Section 51 Cr. P.C.

(Old Code 51 and 52 Cr. P.C. :

Search of arrested persons

There is a new provision in this section which reads :

"and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the Police Officer shall be given to such Person ". This relates to personal property. There is provision to this effect in P.M. Rule 234.

Section 53 Cr. P.C. :

Examination of accused by Medical Practitioner at the request of Police Officer.

This is a new provision. It shall be lawful for a registered Medical Practitioner, acting at the request of a Police Officer not below the rank of Sub-Inspector, to make such examination of an arrested person, as is reasonably necessary in order to ascertain the fact regarding the complicity of the arrested person in the Crime. The Registered Medical Practitioner may use force reasonably necessary for such examination. According to this provision, an arrested person, if required to be examined medically, has no option but to submit himself to such medical examination. Government

have been moved to bring the provisions of this section to the notice of the Registered Medical Practitioners of this State.

Females can only be examined by Lady Doctors.

The arrested person may also demand for such a Medical Examination under Section 54 Cr.P.C., when he is in Police custody and such demands should be complied with.

CHAPTER VI PROCESSES TO COMPEL APPEARANCE :

Section 64 Cr. P.C.

Summons left with a servant is not a proper service. To that extent the old Section 70 stands amended.

Section 69 Cr.P.C.

Service of summons on witnesses by Post.

This section is a new provision. Summons can now be served on a witness by Registered Post with A.D. The acknowledgement receipt or the endorsement of a postal employee regarding refusal of the witness to take delivery will be proof of such service. The Court issuing the summons will have to declare thereafter that the summons have been duly served.

Section 78 (2) Cr. P.C.—Warrant forwarded for execution.

(Old Code 83 Cr. P.C.)

Outside jurisdiction.

Sub-section (2) is a new provision. The Court issuing a warrant shall have to forward along with the warrant the substance of information to the persons to be arrested together with such documents, if any, to enable the court to decide about bail.

Section 81 Cr. P. C.—Bail

The second proviso empowers the Chief Judicial Magistrate to grant bail in non-bailable offence. Previously such person had to be transported to the Court issuing the warrant.

Section 82 Cr. P. C.—Proclamation for absconders.

The Court may direct the proclamation to be published in a local newspaper circulating in the place where the absconder ordinarily resides.

For the purpose of this provision, the O.I.C. of a P.S. while applying for processes under this section may also apply for publication in the newspaper.

Section 83 Cr. P.C.—Attachment of property of absconders.

(Old Code 88 Cr. P. C.)

In the proviso to sub-section (1) it has been laid down that when at the time of issue of proclamation the Court is satisfied by affidavit or otherwise that the persons in relation to whom proclamation is to be issued :—

(a) is about to dispose of the whole or any part of his property, or (b) is about to remove the whole or any of the part of his property from the local jurisdiction of the court, it may order the attachment simultaneously with the issue of the proclamation.

The Police Officer supplying for issue of processes for attachment along with the process for proclamation should furnish ground as required in this section.

CHAPTER VII :—PROCESSES TO COMPEL THE PRODUCTION OF THINGS :

Section 98 Cr. P. C.—Power to compel restoration of educated females. (Old Code Section Cr. P.C.)

In the old code power under this section was vested with the D.M. only. Now the D. M., S.D.M. or Magistrate, 1st Class can issue order under this section.

Section 100 Cr. P. C.—Persons in charge of closed place to allow search. (Old Section 102 & 103 Cr. P.C.)

Sections 102 and 103 Cr.P.C. of the old code have now been combined in this new section. The officer making the search should procure two independent and respectable witnesses, from any other locality, if local people are not available or unwilling to be witnesses.

CHAPTER VIII :—SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR :

Section 106 Cr. P.C. Old Section 106.

It has been redrafted in order to be applicable even if breach of the peace is not an ingredient of the offence. Security may be demanded by the Court at their discretion on conviction under section 143 I.P.C. or Section 149 C.P.C., whatever be the Nature of offence committed by other member of the unlawful assembly. Security can be demanded on conviction for abetment of criminal intimidation and for offences like use of criminal force or for committing mischief. No security can be demanded of one convicted under sections 153-A, 153-B, and 154 I.P.C.

Section 107 Cr. P.C.

This remains with the Executive Magistrates

Section 108 to 110 Cr. P.C.

The Judicial Magistrate will deal with these proceedings.

As per New Section 109 (Old Section 109) the words "Persons who have no ostensible means of subsistence, or who cannot give a satisfactory account of himself" have been omitted. Arrest can be made under the new section when a person conceals himself to commit a "cognizable offence". In the old code it was "any offence."

Section 110 Cr. P.C.

Old Code 110 Cr. P.C.

Old Sub-clause (f) has been redrafted to include some additional offences under different miscellaneous Act.

Section 116 Cr. P. C.—Inquiry as to truth of information. (Old Section 117 Cr. P.C.)

Interim bonds can be taken now after commencement of enquiry only. The preventive proceedings under sections 107, 108, 109 and 110 Cr. P.C. must be completed within a period of 6 months from the date of its commencement, failing which the proceedings should be terminated. If the Magistrate directs otherwise he will have to record reasons for his order. If the delinquent is in custody, the proceeding against him shall stand terminated after the expiry of six months from the date of detection.

(The proceedings under these sections pending on 1-4-1974 shall however not be affected in view of the savings clause in section 484 Cr.P.C. of the new code.)

CHAPTER-X—MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY

Section 129 Cr. P.C.—Disposal of assembly by use of civil force. (Old Code 127 and 128 Cr. P. C.)

The powers under sections 129 to 131 have been conferred only on Executive Magistrates. The power of the O.I.C. of a P.S. can be exercised by any Police Officer not below the rank of S.I. in absence of the O.I.C. Protection is provided by Section 132 for actions taken under Sections 129 to 131.

Section 139 Cr. P.C.—Power of Magistrate to direct local investigation and examination of an Expert.

This is a new provision in the Cr.P.C. in respect of proceedings under section 133 Cr.P.C. For removal of nuisances the executive Magistrate may direct local investigation by persons as he thinks fit, or common and examine an Expert.

Section 144 Cr. P.C.—Power to issue order in urgent case of nuisance or apprehended danger. (Old Code Section 144 Cr. P.C.)

Power under this section are exercisable by Executive Magistrate. The orders can be promulgated for 2 months, and the State Government for sufficient reasons may extend the operation of the order by another six months. The State Government may alter or rescind their own orders for such extension.

Section 145 Cr. P.C.—Procedure where the dispute concerning land or water is likely to cause breach of peace. (Old section 145 Cr. P.C.)

Power under this section are exercisable by all Executive Magistrates. In the new code the Pre-1955 provisions stand restored. The requirement of filing of affidavits has been dispensed with. Now the parties will put in written statement and appear personally, and can be examined and cross examined. As per the provision to sub-section (4) the two months period will be calculated backwards from the date of receipt of report from the police by the Magistrate, instead of from the date of issue of the order of the Magistrate.

PREVENTIVE ARREST :

Section 151 Cr. P.C.—

Sub-section (2) has been added to this section in new code saying that as arrested person shall not be detained in custody for more than 24 hours unless such detention is required or authorised under the law.

CHAPTER XII. INFORMATION TO THE POLICE AND THEIR POWER TO INVESTIGATE :

Section 154 Cr. P.C.—Information in cognizable cases. Old Section 154 Cr. P.C. (F.I.R.)

Sub-section (2) and (3) in this section are new provisions. According to sub-section (2) the Officer registering a case should give a copy of the F.I.R. free of cost, to the informant forthwith. It will be desirable for the Officer recording the F.I.R. to obtain the acknowledgement of the informant/complainant for his having received the copy. The fact should also be mentioned in the Station Diary.

The present practice of sending a copy of the F.I.R. to the S.D.O. has to be discontinued, as the central of investigation now rest with the judicial Magistrates. The Final reports, charge-sheet and other case records and the Magistrate's General Register etc., which were being put up to the S.D.O. for central of Investigation, will now be put up to the judicial Magistrate only.

Under sub-section (3), if the O.I.C. of a P.S. refused to record information in a cog. case. the aggrieved person has a right*to sent the information by post to the S.P. for investigation. If the S.P. is satisfied that the same discloses a cognizable offence, he shall either investigate the case himself for direct any Police Officer sub ordinate to him to investigate. The words "any Police Officer" may not preclude the Officer who has initially refused to Register the case, and he may be asked by the S.P. to register and investigate the case.

**Section 155 Cr. P.C.—Information as to non-cog. cases and investigation of such cases.
(Old Section 155 Cr. P.C.)**

Sub-section (4) is a new addition which lay down that where a case relates to 2 or more offences of which atleast one is cognizable, the case shall be deemed to be a cog. case. This only modifies the practice the Orissa Police have been following.

Section 160 (2) Cr. P.C.—Securing attendance of witnesses by Police

Witnesses attending investigation may demand payments Ss.P. shall submit their requirement of Funds, as indicated in Crime Branch letter No. 3520 dated 16-3-1974.

**Section 161 Cr. P.C.—Examination of witnesses by Police.
(Old Section 161 Cr. P.C.)**

In sub-para. (1) there is no change from the old code. As per sub-para. (2), now the witnesses are bound to answer "truly". In sub-para. (3) in place of "a separate record of the statement" occurring in the old code, the words, " a separate and true record of the statement" have been used. The words underlined have been introduced in the new section.

**Section 164 Cr. P.C.—Recording of confession and statement.
(Old Code 164 Cr. P.C.)**

According to the new code both confessions of accused person and statement of witnesses are to be recorded by the Judicial Magistrate. According to sub-section (3), a person unwilling to make a confession cannot be detained in police custody. Under sub-section (5) the Magistrate is empowered to administer oath to the witnesses whose statement are recorded.

**Section 167 Cr. P.C.—Procedure when investigation can not be completed in 24 hours.
(Old Section 167 Cr. P.C.)**

According to the sub-section (1) an arrested person has to be forwarded to the Judicial Magistrate, alongwith relevant case diaries.

An accused person can be detained in custody for a maximum period of sixty days during which time the investigation has to be completed, otherwise, the accused shall be released on bail if he furnishes bail.

Sub-section (5) and (6) are new provisions. If the investigation in a summon case is not conclude within 6 months from the date of arrest of the accused, the Magistrate shall make an order stepping further investigation. Such order may not be passed by the Magistrate Vs. sufficient

reasons are furnished that in the interest of justice the continuation of investigation beyond the period of 6 months is necessary. An order of the Magistrate stepping investigation can however be vacated by the Sessions Judge.

Therefore all I.Os. and Supervising Officers should take note that the investigation should be completed expeditiously.

**Section 173 Cr. P.C.—Report of Police Officer on completion of investigation.
(Old Section 173 Cr. P.C.)**

The old code requiring the O.I.C. of the P.S. to furnish copies of the documents to the accused before the commencement of the inquiry or trial has been changed. Under the new code the police officer shall now forward all such documents to the Magistrate except where he finds it convenient to supply the copies of the documents to the accused himself. The changes in this section in this regard is due to the fact that in section 207 of the new code the duty of supplying copies of documents to the accused has been imposed upon the Magistrate. The Police, however, will continue to prepare copies under this section, Cl, (7) until sufficient staff are provided to the Magistrates for taking up the duties as per Sections 207 to 209 Cr. P.C.

Sub-section (8) in this section is completely a new provision which envisages that even after submitting a charge-sheet in a case, if new facts come to light, the O.I.C. of a P.S. can make further investigation and submit a supplementary charge-sheet.

**Section 174 Cr. P.C.—police to inquire and report on suicide etc.
(Old Section 174 Cr. P.C.)**

There is no material change except that the information is to be forwarded to the Executive Magistrate. So also the P.M. Report, Inquest report and Final Report are to be put up to the Executive Magistrate. The D.M., S.D.M. (Executive) or any other Executive Magistrate, specially empowered in this behalf by the State Government or by the D.M., are empowered to hold inquest.

**Section 197 Cr. P.C.—Prosecution of Judges and Public Servant.
(Old Code 197 Cr. P.C.)**

According to the new code, Government sanction would be necessary for prosecution of Gazetted Officers and Judges, even after their retirement. Sub-section (2) and (3) are new provision, providing protection against prosecution, similar to the provision in Section 45 which provides protection against arrest. The State Government have been moved to issue notification in respect of the Police and other such Civil Force, vide letter 3457 (27)/CB dated 15-3-1974.

CHAPTER XV. COMPLAINTS TO MAGISTRATES

**Section 202 Cr. P.C.—Postponement of issue of processes (by Magistrate)
(Old Code 202 Cr. P.C.)**

The Magistrate at his discretion may postpone the summoning of accused, and may inquire into the allegations himself or order investigation by police or any other person. The enquiry cannot be entrusted to a Sub ordinate Magistrate. When the complaint is for offence triable by the Court of Sessions, no investigation can be ordered, but the Magistrate shall call upon the complainant to produce his witnesses to be examined on oath. Thereafter action under section 203 may be taken.

CHAPTER XVI .COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

Section 206 Cr. P.C.—Special summons in case of petty offence.

This is a new provision in the Cr.P.C. The Magistrate is empowered to dispense with the appearance of the accused in a petty offence and allow him to plead guilty either by post or through a messenger or a Pleader and pay the fine specified in the summons, which shall not exceed Rs.100 Petty offence has been defined in sub-section (2).

The Police may indicate in their report if the case is a fit one for applying this procedure.

Section 207 Cr. P.C.—Supply to the accused of copy of Police report and other documents.

This is a new section in Cr.P.C. according to which the duty of furnishing to the accused copies of Police paper has been cast on the Magistrate who takes cognizance. A further provision has been made that where the documents are voluminous the accused may be allowed to inspect it personally or through Pleader in the Court instead of being furnished with copies. Each accused person is entitled to receive a set of such document. But till further orders, the police will continue to prepare the copies, as at present, and deliver therein the Courts of the Magistrates. Please see instructions under section 173 Cr.P.C.

Section 208 Cr. P.C.—

Does not relate to Police. The responsibility for supply of copies is not on the Police.

Section 209 Cr. P.C.—Procedure to be followed when there is a complaint case and Police investigation in respect of the same offence.

The present section is a new provision. According to this section when a complaint is filed in the court and the Magistrate has information that the Police is investigating the same offence, the Magistrate shall stay the complaint case and await the police report and on receipt of the police report the Magistrate shall try together the complaint case and the case arising out of the Police Report. Thus the case shall be tried as a Police case. But if no such report is received from the complaint case.

CHAPTER XXIV. GENERAL PROVISION AS TO INQUIRIES AND TRIALS

Section 302 Cr. P.C.—Permission to conduct prosecution. (Old Code 495 Cr. P.C.)

This section authorised the Trying Magistrate to accord permission to conduct prosecution to any person excepting Police Officer below the rank of an Inspector. Inspectors who have taken part in the investigation are not entitled to conduct the prosecution, this has been dealt earlier in Section 25 Cr.P.C.

Section 304 Cr. P.C.—Legal aid to accused at State expense in certain cases.

This is a new provision and the consequence are for reaching. In a trial before the Court of Sessions, Defence Pleader at State expense can be appointed if the accused has not sufficient means to engage a pleader. The High Court is to frame rules in this regard with prior approval of the Government. This State Government may extend this facility in relation to trial of cases before other courts, by a notification.

Section 306 Cr. P.C.—Tender of pardon.

The power has been transferred from the District Magistrate to the Chief Judicial Magistrate.

Section 317 Cr. P.C.—Trial in absence of accused.

Now if the accused persistently disturbs the proceeding by his absence, and is represented by a Pleader, the Court may dispense with the attendance of the accused and proceed with the Trial.

CHAPTER XXVI. PROVISION AS TO OFFENCE AFFECTING THE ADMINISTRATION

Section 344 Cr. P.C.—Summary procedure for trial for giving false evidence.

This is a new provision under which a Court of Session or Magistrate 1st Class, at the time of delivery of any judgement of final order, may try Summarily Offenders for fabricating or giving false evidence, without lodging a separate complaint, and award a sentence of imprisonment upto three months or fine upto Rs.500 or both.

The I.Os. should be very careful in their collection of evidence during investigation and in the maintenance of case diary, so that during trial, there would be no scope provided to any one to impute fabrication of false evidence by the Police.

Section 358 Cr. P.C.—Compensation to persons groundlessly arrested.

This is an extension of Section 553 of the old code. When any person causes a Police Officer to arrest another person, without sufficient ground, the Magistrate hearing the case may award compensation upto Rs. 100.

CHAPTER XXIX. APPEAL

**Section 378 Cr. P.C.—Appeal in case of acquittal.
(Old Code Section 417 Cr. P.C.)**

The time limit for filling an appeal has been extended to 6 months when the complainant is a public servant, but it continue to be 60 days in every other case, computed from the date of order of acquittal. Appeal for inadequacy of sentence can be filed by the State under section 377 Cr.P.C.

Section 428 Cr. P.C.—Period of detention to be set-off.

The period of detention as an U.T.P. shall be set off from the term off imprisonment on conviction.

**Section 436 Cr. P.C.—In what cases bail to be taken.
(Old Code 496 Cr. P.C.)**

Sub-section (2) of the present section is a new provision by which a person who absconds or has broken the condition of his bail bond may not be entitled to bail on subsequent occasion in the same case even if the case isailable.

**Section 437 Cr. P.C.—when bail may be taken in case of non-bailable offence.
(Old Section 497 Cr. P.C.)**

The mere fact that an accused person may be required for a T.I. parade during investigation shall not be sufficient ground for refusing bail if he is otherwise entitled for the same.

Sub-section (3) settles the law on the subject of granting a conditional bail, and empowers the court to impose any condition considered necessary in the interest of justice while granting bail to an accused.

Section 438 Cr. P.C.—Direction for grant of Bail to person apprehending arrest.

This is entirely a new provision for grant of Anticipateary Bail by the High Court or the Court of Sessions, who may direct that a person apprehending arrest in a non-bailable offence shall be released on bail (including conditional bail) in the event of his arrest.

In case of arrest of such a person the O.I.C. of the P.S. shall release him on bail as ordered, if the accused is prepared to offer bail.

**Section 441 Cr. P.C.—Bond of accused and sureties.
(Old Code Sec. 499 Cr. P.C.)**

Sub-section (2) is a new provision which lays down that where any condition is imposed for the release of any person on bail, the bond shall also contain that condition. This provision is applicable to Police also.

CHAPTER XXXVI. LIMITATION FOR TAKING COGNIZANCE

Section 468 Cr. P.C.—Bar to taking cognizance after lapse of the period of limitation.

This is a new provision in Cr. P.C. which lays down the period of limitation after which no court shall take cognizance of an offence, as mentioned in sub-section (2).

- (a) 6 months, if the offence is punishable with fine only.
- (b) One year, if the offence is punishable with imprisonment for a term not exceeding one year.
- (c) 3 years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding 3 years.

Section 469 Cr. P.C.—Commencement of the period of limitation.

The period of limitation will commence :

- (a) on the date of offence, or
- (b) the first day of which one offence comes to the knowledge of either the Police or the person aggrieved if they did not know on the date of offence, or
- (c) where the accused is not known, the first day on which the identity of the offender becomes known to the aggrieved person or to the I.O. whichever is earlier.

In view of the provisions contained in Section 468 and 469, all I. O. and superior officers should ensure that investigation is expeditiously completed and final form submitted well in advance so that the taking of cognizance by a Magistrate is not barred by limitation. Due priority should be given, therefore, to the investigation of cases which are likely to be affected by the above mentioned sections.

Some saving factors have been enumerated in sections 470 to 473 according to which the period of limitation can be extended.

Cognizable cases which cannot be covered under these sections (470 to 473) if reported to the Police after the expiry of the limitation period, it shall be the duty of the O.I.C. of the P.S. to register the case under section 154 Cr.P.C. observing all formalities prescribed by law and then act under the provision of section 157 (1) (b) Cr.P.C. Refer notice should be served in such an event on the informant as per sub-section (2) of section 157 Cr.P.C.

Section 484 Cr. P.C.—

Repeal and saving :

This section has been enacted to make the transition from the old code to the new one as smooth as possible. Any Investigation, Inquiry, Trial or Appeal pending on 1-4-1974 shall be continued and concluded under the old code. But confidential enquiry pending on 1-4-1974 shall not be continued and the case should be committed to the sessions.

Regarding prosecutions by A.P.Ps., please see instructions u/s 25 Cr. P.C. above

(Law-4-74)

(N. Chand, I.P.S.)
Inspector-General of Police, Orissa.

N.B.—An extract of Schedule I of New Cr.P.C. and copies of forms 28 and 45 are enclosed.