Judicial Service Aspirants Group

In the service of Judicial Fraternity

Boost your study through

Webinar on Google Meet

Dear Aspirants of Judicial Service,

We some of the judicial service aspirants are holding a Webinar on subjects noted below on 16-10-2022 from 10:00 A.M. to 05:30 P.M. on Googlemeet. You all along with other interested persons are kindly invited to join the event. It will encourage us to repeat such event.

A sample of lectures to be delivered in the webinar is being sent to you. Detailed programme of the webinar is also being sent to you separately.

Shantanu
Coordinator
Mob. 8448078978

Subjects

1. How to make a customised plan for study and stick to it. How to read, what to read, how to make notes, how to make the choice of Reading Material and the answer writing skills
2. Pre-Trial Proceedings-i.e. Investigation
3. General provisions relating to inquiry and trial
4. Trial Proceedings

Sample lecture literature is attached

FOR WEBINAR dated 16/10/2022

Prepared by Research Wing
of
V.S. DREAM COACHING
234 S.F. D-Mall,
Shakti Khand 2, Indirapuram

Under the unparalled Mentorship of
Hon'ble Mr. Justice Vedpal (Former Judge),
High Court of Judicature at Allahabad

HOW TO GET SUCCESS IN MAINS EXAM!

Dear Aspirants

A systematic approach can make any horse win the race. **Pick your weak points and work on them.** Make time management in answering the questions. Once you discipline yourself, no goal is too big. Keep the following techniques in mind, you can get success in main examination too.

1. Make Sure You Understand the Question

The first thing which we see in the paper is the arrangement of questions as per the allocation of marks. **you must understand what the question is asking. Do not write stories.** This is not your college or university exam. Here, the more precise and on-point you are, the better are the chances for scoring well.

Example, If the question is why the evidence of an accomplice is not trustworthy? Then you cannot write what evidence is and who is an accomplice. This will lengthen your answer, and you won't be able to write the main content asked in the question.

Continue…….

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CHAPTER XII
INFORMATION TO THE POLICE AND THEIR POWER TO INVESTIGATE
(Sections 154 to 176)

SYNOPSIS

A. First Information Report (Sec. 154)
B. Powers of investigation (Secs. 155-159)
C. Attendance and examination of witnesses (Secs. 160 and 161)
D. Statements and confessions (Secs. 162-164)
E. Medical examination of a rape victim (164A)
F. Search by Police Officers (Secs. 165-166)
G. Letters of request (Secs. 166A and 166B)
H. Other provisions regarding investigation (Secs. 167-176)

A. First Information Report (F.I.R.)

Introduction

The term "First Information Report" is nowhere define in Code of Criminal Procedure. First Information Report, in simple words means the information given at first point of time, regarding the commission of an offence. The principal object of the First Information Report, from the informant's point of view is to set the criminal law in motion and from the point of view of

investigating authorities is to obtain information about any criminal activity so as to be able take suitable step of collecting evidence and trace and bring to book the real culprits. The provisions relating to recording the First Information Report in cognizable cases has been provided under Sec. 154 Cr.P.C.

Sec. 154 deals with what is commonly known as a First information Report. It provides that every information relating to the commission of a cognizable offence, if given orally to an Officer-in-charge of a Police Station, must be reduced in writing by him, and read over to the informant. The information should also be signed by the person giving it, and the substance thereof must be entered in the book which is to be kept by such Officer in the prescribed form. A copy of the information recorded, as above, is also to be given free of cost to the informant.

If the officer-in-charge of the Police Station refuses to record such information, the aggrieved person may send the same by post to the Superintendent of Police. If the latter is satisfied that such information discloses the commission of any cognizable offence, he must either investigate the case himself, or direct investigation of the case by any subordinate Police Officer.

It will be seen that Sec. 154 enables a Station House Officer to receive and record the information of the commission of a cognizable offence even outside his station limit, although he may have no power, under Sec. 157, to conduct an investigation in respect of that offence.

Criminal Law Amendment Act, 2013 now provides that if information is given by the woman against whom certain specified offences under the Indian Penal Code are alleged to have been committed or attempted, then the information is to be recorded by a woman police officer or any woman officer.

The said Amendment further provides that if the person against certain specified offences under the IPC are alleged to have been committed or attempted, is temporarily or permanently mentally physically disabled, then the information is to be recorded by a police officer at the residence of the person seeking to report such an offence or at a convenient of such person's choice in the presence of an interpreter or a special educator, and the same is to be video graphed.

The term F.I.R. is thus a technical description of the report made out under Sec. 154, giving the first information of a cognizable crime to the Police. This report is usually made by the complainant or some other persons on his behalf.

It is to be remembered that the first information is the basis of the case, and whether it is true or false, it usually represents what was intended by the

informant to be the case set up by him at that time. All Criminal Courts should, therefore, bear in mind the importance of examining such first information very carefully. In view of the notorious tendency **(especially in India)** to improve upon the original statement of facts to strengthen the case as it proceeds, and sometimes, to add to the persons originally named as the alleged offenders, it is of great importance to know what exactly the first information was.

Supreme Court in case **Radhey Shyam Narendra Vs. State of Orissa (1980) 1 SCC 585,** has held that when the F.I.R. is lodged with great promptitude, minor omissions or variations in F.I.R., which do not distort the substratum of the prosecution story, would not make the prosecution case unreliable.

Commencement of investigation without lodging FIR

Usually, in case of cognizable offences, the investigation is initiated by the giving of information under Section 154 to a police officer in charge of a police station.

However, for the initiation of the investigation, lodging of FIR is not a pre-condition as Section 157 provides that when from the information received or **"otherwise"** the police officer has reason to suspect the commission of the cognizable offence, then he can send a report to Magistrate and conduct the investigation. Means, if from some other sources police officer comes to know about the commission of the cognizable offence then without lodging the FIR he can proceed to the spot, initiate the investigation and record the formal information (FIR) on his return to the police station.

Registration of FIR is mandatory – No Preliminary inquiry is required

Sec. 2(g) states that inquiry means every inquiry, other than a trial, conducted under this Code by a Magistrate or court. Therefore, police officers can't make a preliminary inquiry before lodging FIR.

A Constitution Bench of Hon'ble Apex Court in case **Lalita Kumari Vs. Govt. of U.P. and Ors., AIR 2014 SC 187,** ruled that lodging of FIR is mandatory, no preliminary inquiry is required. But in certain cases, preliminary inquiry may be conducted such as:-
(a) Matrimonial disputes/ family disputes
(b) Commercial offences
(c) Medical negligence cases
(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over three months delay in reporting the matter without satisfactorily explaining the reasons for delay.

Hon'ble Apex Court in case Lalita Kumari (Supra) followed three judgments of **State of Haryana Vs. Bhajan Lal AIR 1992 SC 604, Ramesh Kumari Vs. State (NCT of Delhi) AIR 2006 SC 1322 and Parkash Singh Badal Vs. State of Punjab, AIR 2007 SC 1274.**

On the other hand, the Hon'ble Court overruled the following judgments:-
1. P. Sirajuddin Vs. State of Madras AIR 1971 SC 520
2. Sevi Vs. State of Tamil Nadu, AIR 1981 SC 1230
3. Shashikant Vs. Central Bureau of Investigation, AIR 2007 SC 351
4. Rajinder Singh Katoch Vs. Chandigarh Admn., AIR 2008 SC 178

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General provisions as to Inquiries and Trials (Sections 300 to 327)

A. Rule against double jeopardy (Sec. 300)

Sec. 300 Cr.P.C. provides protection against double jeopardy. It provides that a person who has once been tried by a Court of competent jurisdiction for any offence, and convicted or acquitted of such offence not be liable, whilst such conviction or acquittal remains in force, to be again for the same offence, nor on the same facts for any other offence, which a different charge might have been made.

It is, however, also provided that if a person is acquitted or convicted of any offence, he may be afterwards tried for any distinct offence for which a separate charge might have been made against him at the former trial. However this can be done only with the consent of the State Government.

It is further provided that if a person convicted of any offence which is constituted by any act causing consequences, which together with such act constituted a different offence from the one of which he was convicted, he may be afterwards tried for such second mentioned offence, if the consequences had not happened or were not known to the Court to have happened, at the time when he was convicted. **(Sec. 300(3))**

Moreover, a person who is acquitted or convicted of any offence constituted by any acts may, despite the acquittal or conviction, be subsequently charged with and tried for any other offence constituted by the same acts, if the Court by

which he was tried first was not competent to try the offence with which he is charged subsequently.

Likewise, a person who has been discharged under Sec. 258 cannot be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Superior Court. It is also expressly provided that the dismissal of a complaint or the discharge of an accused does not amount to an acquittal, for the purpose of this section.

It will be seen that Sec. 300 is based on the maxim, nemo debet bis vexari, i.e., a person cannot be tried for a second time for an offence which is involved in the offence with which he was previously charged.

Applicability of the principle of double jeopardy

Hon'ble Apex Court in case **Sangeetaben Mahendrabhai Patel Vs. State of Gujarat, AIR 2012 SC 2844,** ruled that for the applicability of the principle of double jeopardy, the earlier and the latter offence for which the accused is tried must be same. The test to determine whether both offences are the same is not the identity of allegations but identity of ingredients of the offences.

In order that the section may apply, the following three conditions must be satisfied:
(a) The person must have been actually tried by a competent court for the same offence of which he is charged in the second trial.
(b) The person must have been convicted or acquitted in the earlier trial. **(Dismissal or discharge is, however, not acquittal.)**
(c) The conviction or acquittal must be in force, i.e. it must not have been set aside by a superior court.

Art. 20(2) of the Constitution of India also provides that no person shall be prosecuted and punished for the same offence more than once.

It is pertinent to note that the provisions of Sec. 300 on the question , of previous acquittal are not the same as the principles underlying the English doctrine of **autrefois acquit**, inasmuch as the Code makes a clear distinction between discharge and acquittal.

B. Appearance by Public Prosecutor, and conduct of prosecution by other persons (Secs. 301-302)

Sec. 301 provides that the Public Prosecutor or Assistant Public Prosecute in charge of a case may appear and plead without any written authority before any

Court in which that case is under inquiry, trial or appeal. If, in any such case, any private person instructs a Pleader to prosecute any person under the Code, the Public Prosecutor **(or Assistant Public Prosecutor, as the case may be)** must conduct the prosecution, and the other Pleader must act under the directions of the Public Prosecutor **(or Assistant Public Prosecutor)**. with the permission of the Court, such other Pleader may also submit written arguments after the evidence is closed in the matter.

Sec. 302 then empowers a Magistrate to permit the prosecution to be conducted by any person other than a Police Officer below the rank of an Inspector. However, the Advocate-General, the Government Advocate, the Public Prosecutor or the Assistant Public Prosecutor do not require such permission. Moreover, a Police Officer cannot be permitted to conduct the prosecution if he has taken part in the investigation of the offence with respect to which the accused is being prosecuted.

C. Right to be defended (Sec. 303)

Sec. 303 contains a salutary rule which provides that any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under the Criminal Procedure Code, may be defended by a Pleader of his choice as a matter of right.

The Bombay High Court has observed that this section not only contemplates that the accused should be at liberty to be defended by a Pleader at the time when the proceedings are actually going on, but also implies that he should have a reasonable opportunity, if in Police custody, of communicating with his legal advisor for the purpose of his defence. **(Llewelyn Evans. —1926 28 B.LR 1043)**

The words **"of his choice"** indicate that no advocate is to be foisted on the accused against his will, and that he should be allowed to be defended by an advocate in whom he has full confidence.

D. Legal aid to the accused (Sec. 304)

Sec. 304 provides that where, in a trial before the Sessions Court, the accused is not represented by a Pleader, and it appears to the Court that the accused does not have sufficient means to engage a Pleader, the Court must a Pleader for his defence at the expense of the State.

With the previous approval of the State Government, the High Court may make rules providing for —

(a) The mode of selecting Pleaders for defence, as above:
(b) The facilities to be allowed to such Pleaders by the Courts; and
(c) The fees payable to such Pleaders by the Government, and generally, for carrying out the above purpose.
The above provision can also be extended to other Courts if the State Government issues a Notification to that effect.

As observed by justice Krishna Iyer **(in R.M. Wasawa, A.I.R.1974 S.C. 1143)**, —

> *"Indigence should never be a ground for denying fair trial of equal justice... Particular attention should be paid to appoint competent advocates, equal to handling complex cases, not patronising gestures to raw entrants at the Bar. Sufficient time and complete papers should also be made available, so that the Advocate chosen may serve the cause of justice."*

The Supreme Court has observed that the obligation under Sec. 304 of the Code, to provide legal aid to the indigent accused does riot arise only when the teal commences, but from the time the accused is produced before the nearest Magistrate, as required by law. **(Khatri Vs. State of Bihar, 1981 Cr. L.J. 470)**

The Supreme Court has also held that if an accused is convicted after a trial in which he was not given legal aid, the conviction could be set aside as being violative of Art. 21 of the Constitution. **(Sukh Das Vs. Union Territory of Arunachal Pradesh, AIR 1986 S.C. 911)**

It has also been held that when an accused person wishes to enforce this remedy, the proper course would be an application under Sec. 304 of the Cr. P.C., — and not a writ of mandamus under the Constitution. **(Ranjan Dwivedi Vs. Union of India, A.I.R. 1983 S.C. 624)**

E. Procedure when a Corporation is an accused (Sec. 305)

Sec. 305 provides that when a corporation is an accused person, or when it is one of the accused persons, in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or the trial. Such an appointment need not be under the seal of the corporation.

When such a representative appears, any requirement of the Code that anything is to be done in the presence of the accused or anything is to be read or explained to the accused, is to be construed to refer to the represent Similarly,

any requirement that the accused should be examined is to construed as a requirement that such a representative should be examined.

It is further provided that when a statement in writing purporting to be signed by the Managing Director of the corporation or by any person having the management of its affairs, to the effect that the person named in the, statement has been appointed as the representative of the corporation for the purpose of Sec. 305, is filed before the Court, the Court must presume that such a person has been so nominated, unless, of course, the contrary is proved.

If any question arises as to whether any person appearing before the Court as the representative of a corporation is or is not in fact, such a representative, this question is also to be determined by the Court itself.

For the purpose of Sec. 305, the term "corporation" means an incorporated company, or any other body corporate, and includes a society registered under the Societies Registration Act, 1860.

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Trials in Concise Form and in Elaborated Form

Trials (Secs. 225-265L)

ELABORATION OF TRIALS

CHAPTER XVIII
TRIAL BEFORE COURT OF SESSION (Secs. 225-237)

Criminal Procedure Code 1973 has classified trials into two groups namely **Session Trial and Magistrate Trial**, depending on the gravity of the offences and punishment prescribed thereof. The first schedule of the Code of Criminal Procedure 1973 is divided in two parts. First part of the schedule through its column No.6 gives out list of offences under Indian Penal Code and shows which of them are triable by Court of Session or Court of Magistrate. Second part of this schedule deals with the offences against other law.

Chapter XVIII of Code consisting of Section 225 to 237 deal with procedure in trial by Court of Session.

According to Section 225 in every trial before Court of Session, the prosecution shall be conducted by Public Prosecutor.

Section 226 lays down that when the accused appears or is brought before the court in pursuance of a commitment of the case under Section 209, the

prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of accused.

Section 227 of Code then provides if upon consideration of the record of the case and documents Submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reason for so doing.

According to Section 228, if the judge after such consideration and hearing is of opinion that there is ground for presuming that the accused has committed an offence which (a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and by order transfer the case for trial to Chief Judicial Magistrate and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for trial of warrant case instituted on Police Report. (b) is exclusively triable by the Court of Session, he shall frame in writing a charge against accused and then accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Only material available on record is to be considered by the Court and to see only to prima facie case of commission of offence, while framing charge

In **State of Delhi Vs. Gian Devi AIR 2001 SC 40**, the Hon'ble Supreme Court observed that legal position is well settled that at the stage of framing of charge trial Court is not to examine and assess in detail, the materials, placed on record by prosecution, nor is it for court to consider sufficiency of materials to establish the offence alleged against the accused. At the stage of charge, court is to examine the materials only with a view to be satisfied that ***prima facie case*** of commission of offence alleged, against the accused has been made out.

Later on in case **Rukmini Narvekar Vs. Vijaya Satardekar, AIR 2009 SC 1013,** the Supreme Court observed that at the time of framing of charges, the court can consider only the material placed before it by the investigating agency.

At the stage of framing of the charge, mini trial is not permissible

Hon'ble Apex Court in case **State of Rajasthan Vs. Ashok Kumar Kashyap (2021) 5 Scale 604,** observed that defence on merits is not to be considered at the stage of framing of the charge and/or at the stage of discharge application.

The Court observed that at the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.

Section 229 lays down that if accused pleads guilt, the judge shall record the plea and may in his discretion convict him thereon.

Section 230 says that if the accused refuses to plead or does not plead or claims to be tried or is not convicted under Section 229, the judge shall fix a date for examination of witnesses and on the application of prosecution, may issue any process for compelling the attendance of any witness or the production of any document or thing.

Section 231 of Code provides that on the date so fixed, the judge shall proceed to take all such evidence as may be produced in support of prosecution. The Judge may in his discretion, permit the cross examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross examination.

In **Bava Hajeer Vs. State of Kerala 1974 Cri.L.J. 755,** Supreme Court held "It is undoubtedly the duty of prosecution to lay before the court all material evidence available to it, which is necessary for unfolding its case but it would be unsound to lay down as general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorized.

According to **Sec. 313, Cr.P.C.,** after the closure of prosecution case, the evidence appearing against accused is to be stated to him for enabling him personally to explain the circumstances appearing in the evidence against him. This procedure is based on the principle of natural justice, which requires that if an opportunity is not afforded to a person to explain the circumstances and evidence appearing against him, such circumstances and evidence shall not be read in evidence against him, to base his conviction. If there is no evidence against accused, there is no necessity for his examination under Sec. 313 Cr.P.C.

The purpose and the object of the statement under Sec. 313 Cr.P.C., was considered by the Hon'ble Supreme Court in case of **Anjan Kumar Sharma Vs. State of Assam, AIR 2017 SC 2617.**

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