



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

CODE OF CRIMINAL PROCEDURE
ACT, No. 15 OF 1979

[Certified on 8th March, 1979]

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[Certified on 8th March, 1979]

L.D.—O. 65/78

AN ACT TO REGULATE THE PROCEDURE OF THE CRIMINAL COURTS,
TO REPEAL CHAPTERS II AND IV OF THE ADMINISTRATION OF
JUSTICE LAW, NO. 44 OF 1973, AND TO PROVIDE FOR CONNECTED
MATTERS

BE it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows:—

1. This Act may be cited as the Code of Criminal
Procedure Act, No. 15 of 1979, (hereinafter referred to as
"the Code") and shall come into operation on such date
(hereinafter referred to as the "appointed date") as the
Minister by Order published in the *Gazette* may appoint.

Short title
and date of
operation.

PART I

CHAPTER I

PRELIMINARY

2. In this Code unless the context otherwise requires—

Inter-
pretation.

"Attorney-General" means the Attorney-General of the
Republic of Sri Lanka and includes an acting
Attorney-General;

"Attorney-
General."

"bailable offence" means an offence shown as bailable
in the First Schedule or which is made bailable
by any other law for the time being in force, and

"Bailable
offence."

"non-bailable offence" means any other offence;

"non-bailable
offence."

"Chapter" means a Chapter of this Code, and
"Schedule" means a schedule annexed to this Code,
and

"Chapter."
"Schedule."
"Section."

"section" means a section of this Code;

"section."

"Chief Justice" means the Chief Justice of the Republic
of Sri Lanka and includes an acting Chief Justice;

"Chief
Justice."

"cognizable offence" means an offence for which and
"cognizable case" means a case in which a peace
officer may in accordance with the First Schedule
arrest without warrant;

"Cognizable
offence."

"complaint" means the allegation made orally or in
writing to a Magistrate with a view to his taking
action under this Code that some person, whether
known or unknown, has committed an offence;

"Complaint."

- "Corporation."** "corporation" includes any corporation, board or other body established by or under any written law with capital wholly or partly provided by the Government by way of grant, loan or other form;
- "Court of Appeal."** "Court of Appeal" and "court" when applicable to the Court of Appeal mean the Court of Appeal of the Republic of Sri Lanka for the time being or the President of the Court of Appeal or any Judge or acting Judge thereof;
- "Discharges."** "discharge", with its grammatical variations and cognate expressions means the discontinuance of criminal proceedings against an accused but does not include an acquittal;
- "Enactment."** "enactment" includes an Ordinance, Act or Law of Sri Lanka;
- "Explosives."** "explosives" has the same meaning as in the Explosives Act;
- "Fine."** "fine" includes any fine, pecuniary forfeiture, or compensation adjudged upon any conviction for any crime or offence or for the breach of any enactment by any court;
- "Fiscal."** "Fiscal" means the Fiscal of a court and includes any person authorized either generally or specially by a Judge to exercise, perform or discharge any power, duty or function of the Fiscal under this Code;
- "Government Agent."** "Government Agent" or "Government Agent of the district" means the Government Agent of the Administrative District and includes an Additional or an Assistant Government Agent of such district;
- "Government Analyst."** "Government Analyst" includes any person appointed to be or to act as Government Analyst or Deputy or Assistant Government Analyst;
- "Government Examiner of Questioned Documents."** "Government Examiner of Questioned Documents" includes any person appointed to be or to act as Government Examiner of Questioned Documents or Assistant Government Examiner of Questioned Documents;
- "Government medical officer."** "Government medical officer" includes any officer of the Department of Forensic Medicine of any Faculty of Medicine of the University of Ceylon;

- "High Court" and "court" when applicable to the High Court mean the High Court of the Republic of Sri Lanka for the time being or a Judge of the High Court or an acting Judge of the High Court ;
- "High Court."
- "indictable offence" means an offence triable only by the High Court whether with or without a jury or by the High Court at Bar without a jury ;
- "Indictable offence."
- "Information Book" includes a crime pad or file maintained by the Criminal Investigation Department and any bureau of investigation for the purpose of recording statements ;
- "Information Book."
- "inquirer" means a person appointed by the Minister under Chapter XI ;
- "Inquirer"
- "inquiry" includes every inquiry conducted under this Code before a Magistrate's Court or by an inquirer ;
- "Inquiry."
- "island" means the Island of Sri Lanka ;
- "Island"
- "Judge" means the presiding officer of a court and includes a Judge of the Supreme Court, Court of Appeal, High Court, District Court and Magistrate's Court as the context may require and includes an acting Judge of such court ;
- "Judge."
- "judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken ;
- "Judicial proceeding."
- "Magistrate" means a Magistrate appointed to a Magistrate's Court and includes a Municipal Magistrate, a Magistrate of a Juvenile Court and an acting or additional Magistrate of any such court ;
- "Magistrate."
- "non-cognizable offence" means an offence for which and "non-cognizable case" means a case in which a peace officer may not arrest without warrant ;
- "Non-cognizable offence."
- "offence" means any act or omission made punishable by any law for the time being in force in Sri Lanka ;
- "Offence."
- "offensive weapon" has the same meaning as in the Offensive Weapons Act, No. 18 of 1966 ;
- "Offensive weapon."

- "Officer in charge of a police station" "officer in charge of a police station" includes if the context so requires an officer in charge of a branch of a police station and when the officer in charge of a police station or of a branch of a police station is absent therefrom or unable from illness to perform his duties, the police officer present at the police station or at the branch who is next in rank to such officer ;
- "Peace officer." "peace officer" includes police officers and Grama Seva Niladharis appointed by a Government Agent in writing to perform police duties ;
- "Penal Code." "Penal Code" means the Penal Code together with every statutory modification or amendment thereof ;
- "Person." "person" includes a body of persons, whether incorporate or not ;
- "Pleader." "pleader" used with reference to any proceeding in any court means an attorney-at-law ;
- "Police officer." "police officer" means a member of an established police force and includes police reservists ;
- "Police station." "police station" means any post declared generally or specially by the Minister in charge of the subject of Defence to be a police station, and includes a mobile police post, the Criminal Investigation Department and any bureau of investigation ;
- "Prescribed." "prescribed" means prescribed by this Code or by any rules made thereunder ;
- "Registrar." "Registrar" means the Registrar of any court as the context may require ;
- "Registrar of Finger Prints." "Registrar of Finger Prints" means the officer for the time being holding the office of the Registrar of the Finger Prints Identification Office ;
- "Solicitor-General." "Solicitor-General" means the Solicitor-General of Sri Lanka and includes an Additional Solicitor-General and a Deputy Solicitor-General ;
- "State Counsel." "State Counsel" includes a Senior State Counsel and an acting State Counsel ;
- "Summary offence." "summary offence" means an offence triable by a Magistrate's Court ;

"Supreme Court" and "court" when applicable to the Supreme Court mean the Supreme Court of the Republic of Sri Lanka for the time being or the Chief Justice or any Judge thereof;

"Supreme Court."

"suspended sentence" means a sentence in respect of which an order under section 303 is made;

"Suspended sentence."

"writing" and "written" include printing, lithography, photography, engraving, and every other mode in which words or figures can be expressed on paper or on any substance.

"Writing."
"Written."

3. (1) Words which refer to acts done extend to illegal omissions.

Words referring to acts include illegal omissions.

(2) All words and expressions used herein and defined in the Penal Code and not herein before defined shall be deemed to have the meanings respectively attributed to them by that Code.

Words to have same meaning as in the Penal Code.

(3) Whenever by or for the purposes of this Code any person is directed or required to sign a document the signature must be written with a pen or other like instrument and must not be affixed or impressed by a stamp or other like means.

Signatures to be in handwriting.

4. Where a power, jurisdiction or right is conferred, or a duty is imposed, on the Attorney-General, Solicitor-General, Inspector-General of Police, Government Analyst, Government Examiner of Questioned Documents, Registrar of Finger Prints, or the Registrar of a court, then, such power, jurisdiction or right may be exercised and the duty performed by the holder for the time being of the office or the acting holder of such office or the additional or the deputy or the assistant officer. Such additional, deputy or assistant officer shall include any person appointed to act in such office.

Powers; jurisdiction, rights and duties of certain officers.

5. All offences—

(a) under the Penal Code,

(b) under any other law unless otherwise specially provided for in that law or any other law,

Trial of offences under Penal Code and other laws.

shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of this Code.

Saving of powers of Supreme Court, Court of Appeal & Attorney-General.

Cases not provided for.

6. Anything in this Code shall not be construed as derogating from or limiting the powers or jurisdiction of the Supreme Court or of the Court of Appeal or of the Judges thereof or of the Attorney-General.

7. As regards matters of criminal procedure for which special provisions may not have been made by this Code or by any other law for the time being in force such procedure as the justice of the case may require and as is not inconsistent with this Code may be followed.

PART II

CHAPTER II

POWERS OF CRIMINAL COURTS

A—POWERS GENERALLY

Power of Supreme Court, and Court of Appeal, to inspect courts of first instance.

8. In addition to other powers vested in the Supreme Court and the Court of Appeal, such courts in the exercise of their powers of superintendence may inspect all courts of first instance and give directions as to the keeping of the records thereof.

Criminal summary jurisdiction of Magistrates' Courts.

9. Subject to and in accordance with the provisions of this Code every Magistrate's Court shall have—

(a) power and authority and is hereby required to hear, try, determine, and dispose of in a summary way all suits or prosecutions for offences committed wholly or in part within its local jurisdiction, which offences by this Code or any other law in force are made cognizable by a Magistrate's Court or a District Court ;

Jurisdiction to inquire into the commission of offences.

(b) jurisdiction—

(i) to inquire into all offences committed or alleged to have been committed wholly or in part within its local jurisdiction or in relation to which jurisdiction is by this Code given to such court to inquire into, to summon and examine all witnesses touching such offences, and to issue warrants and other processes to apprehend and summon all criminals and offenders and deal with them according to law ; and

(ii) to issue warrants to search or to cause to be searched all places wherein any stolen goods or any goods, articles, or things with which or in respect of which any offence has been committed are alleged to be kept or concealed, and to require persons to furnish security for the peace or for their good behaviour according to law ; and

To issue search warrants and to require sureties for the peace.

(iii) to inquire into all cases in which any person shall die in any prison or mental or leprosy hospital or shall come to his death by violence or accident, or when death shall have occurred suddenly, or when the body of any person shall be found dead without its being known how such person came by his death.

To inquire into cases of sudden or accidental death.

10. Subject to the other provisions of this Code any offence under the Penal Code whether committed before or after the appointed date may be tried save as otherwise specially provided for in any law—

Offences under Penal Code.

- (a) by the High Court ; or
- (b) by a Magistrate's Court where that offence is shown in the eighth column of the First Schedule to be triable by a Magistrate's Court.

11. Any offence under any law other than the Penal Code whether committed before or after the appointed date shall be tried save as otherwise specially provided for in any law—

Offences under other laws.

(a) where a court is mentioned in that behalf in that law—

(i) by the High Court where the court mentioned is the High Court or in relation to an offence punishable with imprisonment for a term exceeding two years or with a fine exceeding one thousand five hundred rupees, the court mentioned is the District Court ;

(ii) by a Magistrate's Court where the court mentioned is the Magistrate's Court or in relation to an offence punishable with imprisonment for a term not exceeding two years or with a fine not exceeding one thousand five hundred rupees, the court mentioned is the District Court ;

(b) where a court is not mentioned in that behalf in that law—

- (i) by the High Court ; or

(ii) by a Magistrate's Court where the offence is punishable with imprisonment not exceeding two years or with a fine not exceeding one thousand five hundred rupees.

High Court to try cases only upon indictment.

12. Subject to the provisions of this Code and of any other written law the High Court shall not take cognizance of any offence unless the accused person has been indicted before it for trial by or at the instance of the Attorney-General.

Sentence which High Court may impose.

13. The High Court may impose any sentence or other penalty prescribed by written law.

Sentence which a Magistrate's Court may impose.

14. A Magistrate's Court may impose any of the following sentences:—

- (a) imprisonment of either description for a term not exceeding two years;
- (b) fine not exceeding one thousand five hundred rupees;
- (c) whipping;
- (d) any lawful sentence combining any two of the sentences aforesaid:

Provided that anything in this section shall not be deemed to repeal the provisions of any enactment in force whereby special powers of punishment are given.

No sentence of imprisonment for a term of less than seven days.

15. (1) Notwithstanding anything in this Code, the Penal Code, or any other written law to the contrary, any court shall not sentence any person to imprisonment, whether in default of payment of a fine or not, for a term which is less than seven days.

Sentence of detention in precincts of court in lieu of imprisonment.

(2) Any court may, in any circumstances in which it is empowered by any written or other law to sentence an offender to imprisonment, whether in default of payment of a fine or not, in lieu of imposing a sentence of imprisonment order that the offender be detained in the precincts of the court until such hour on the day on which the order is made, not being later than 8 p.m., as the court may specify in the order.

(3) Any court may impose such term of imprisonment in default of payment of a fine as is authorized by law in case of such default, provided that the term imposed is not in excess of the court's powers under this Code.

Power of courts to sentence to imprisonment in default of payment of fine.

(4) The imprisonment imposed under subsection (3) may be in addition to a substantive sentence of imprisonment for the maximum term that may be imposed by the court under sections 13 and 14.

16. (1) When a person is convicted at one trial of any two or more distinct offences the court may subject to section 301 sentence him for such offences to the several punishments prescribed therefor which such court is competent to inflict; such punishments when consisting of imprisonment to commence, unless the court orders them or any of them to run concurrently, the one after the expiration of the other in such order as the court may direct, even where the aggregate punishment for the several offences is in excess of the punishment which the court is competent to inflict on conviction of one single offence:

Sentence in case of conviction for several offences at one trial.

Provided that if the case is tried by a Magistrate's Court the aggregate punishment shall not exceed twice the amount of punishment which such court in the exercise of its ordinary jurisdiction is competent to inflict.

Maximum term of punishment.

(2) For the purpose of appeal aggregate sentences imposed under subsection (1) in case of convictions for several offences at one trial shall be deemed to be a single sentence.

B—PAYMENTS OF COSTS AND COMPENSATION

17. (1) Whenever a court acquits or discharges the accused and declares that the complaint was frivolous or vexatious, it shall be lawful for such court to order the complainant to pay State costs in a sum determined by the court. The court may, in addition, at the same time, order the complainant to pay to the accused or to each of the accused when there are more than one, such compensation as it shall think fit.

Payment of costs and compensation upon acquittal.

(2) Whenever any person causes a police officer to arrest another person, if it appears to the court taking cognizance of the case that there was no sufficient ground for causing such arrest, the court may award such compensation as it thinks fit to be paid by the person so causing the arrest to the person so arrested for his loss of time and income and for his expenses in the matter. If more persons than one are arrested, the court may in like manner award to each

of them such compensation as the court shall think fit. The payment of such compensation shall not be a bar to an action for false imprisonment.

(3) Before making any order under the preceding subsections the court shall record and consider any objection which the complainant may urge against the making of the order, and, if the court makes such order, it shall record its reasons for making the same.

Payment of
compensation
upon
conviction.

(4) Whenever any person is convicted of any offence or where the court holds the charge to be proved but proceeds to deal with the offender without convicting him, the court may order the person convicted or against whom the court holds the charge to be proved to pay within such time or in such instalments as the court may direct, such sum by way of compensation to any person affected by the offence as to the court shall seem fit.

(5) If the offender referred to in subsection (4) is under the age of sixteen years the court may, if it deems fit, order the payment to be made by his parent or guardian.

(6) Any sum awarded under this section whether by way of costs or compensation shall be recoverable as if it were a fine imposed by the court.

Compensation
not to exceed
five hundred
rupees.

(7) When the compensation ordered is by a Magistrate's Court such compensation shall not exceed five hundred rupees to each aggrieved party.

Fine may
be applied
to defray
expenses of
prosecution.

(8) Whenever a court imposes a fine or a sentence of which a fine forms a part, the court may order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses properly incurred in the prosecution; or

(b) in compensation for the injury caused by the offence committed.

(9) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

C—COMMUNITY SERVICE ORDERS

Community
service
orders.

18. (1) The court may in lieu of imposing a sentence of imprisonment on conviction of an accused person or in lieu of imposing a sentence of imprisonment on an accused person in default of payment of a fine enter an order hereinafter referred to as a "community service

order" directing the accused person to perform stipulated service at a named place in a State or State-sponsored project, if regulations have been made by the Minister for carrying out such an order.

(2) The duration of the community service order shall not be more than one year when the order is entered by a Magistrate and three years when the order is entered by the High Court.

(3) If the convicted person in respect of whom a community service order has been entered, fails to attend at the place of work named, or having attended fails to do the stipulated service or is irregular in attendance or not punctual in attendance or does not work to the satisfaction of the management of the project or otherwise fails to comply with such community service order, then it shall be lawful for the court which entered the order to revoke it and impose such sentence of imprisonment as it thinks fit.

(4) Throughout the duration of the community service order, the manager or a supervising officer of the project shall forward, every month to the court which passed the community service order, a report on the attendance and work of the convicted person and stating whether the community service order is being or has been complied with and such report shall be final and conclusive on such questions.

PART III

GENERAL PROVISIONS

CHAPTER III

OF AID AND INFORMATION TO THE MAGISTRATES AND POLICE AND PERSONS MAKING ARRESTS

19. Every person is bound to assist a Magistrate or a peace officer reasonably demanding his aid—

(a) in the taking of any other person whom such Magistrate or peace officer is authorized to arrest;

(b) in the prevention of a breach of the peace or of any injury attempted to be committed to any public property;

(c) in the suppression of a riot or any affray.

Public when
to assist
Magistrates
and peace
officers.

Aid to person other than peace officer executing warrant.

20. When a warrant is directed to a person other than a peace officer any other person may aid in the execution of such warrant if the person to whom the warrant is directed be near at hand and acting in the execution of his warrant.

Public to give information of certain offences.

21. Every person aware—

(a) of the commission of or the intention of any other person to commit any offence punishable under the following sections of the Penal Code namely, 114, 115, 116, 117, 118, 119, 120, 121, 122, 126, 296, 297, 371, 380, 381, 382, 383, 384, 418, 419, 435, 436, 442, 443, 444, 445 and 446 ;

(b) of any sudden or unnatural death or death by violence, or of any death under suspicious circumstances, or of the body of any person being found dead without it being known how such person came by death,

shall in the absence of reasonable excuse—the burden of proving which shall lie upon the person so aware—forthwith give information to the nearest Magistrate's Court or to the officer in charge of the nearest police station or to a peace officer or to the Grama Seva Niladhari of the nearest village of such commission or intention or of such sudden unnatural or violent death or death under suspicious circumstances or of the finding of such dead body.

Peace officer bound to report certain matters.

22. Every peace officer shall forthwith communicate to the nearest Magistrate or inquirer having jurisdiction or to his own immediate superior officer any information which he may have or obtain respecting—

(a) the commission of or the attempt to commit any offence within the local jurisdiction in which he is empowered to act ;

(b) the occurrence therein of any sudden or unnatural death or of any death by violence or under suspicious circumstances ;

(c) the finding of the dead body of any person without it being known how such person came by death.

CHAPTER IV

OF ARREST, ESCAPE, AND RETAKING

A.—ARREST GENERALLY

23. (1) In making an arrest the person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action and shall inform the person to be arrested of the nature of the charge or allegation upon which he is arrested.

Arrest how made.

Explanation.—Keeping a person in confinement or restraint without formally arresting him or under the colourable pretension that an arrest has not been made when to all intents and purposes such person is in custody shall be deemed to be an arrest of such person.

Explanation.

(2) If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, the person making the arrest may use such means as are reasonably necessary to effect the arrest.

Resisting endeavour to arrest.

(3) Anything in this section shall not give a right to cause the death of a person who is not accused of an offence punishable with death.

24. If any person acting under a warrant of arrest or having authority to arrest has reason to believe that any person to be arrested has entered into or is within any place, the person residing in or in charge of such place shall on demand of such person acting or having authority as aforesaid allow him free ingress therein and afford all reasonable facilities for a search therein.

Search of place entered by person sought to be arrested.

25. If ingress to such place cannot be obtained under section 24 it shall be lawful in any case for a person acting under a warrant, or in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape, for a peace officer to enter such place and search therein, and in order to effect an entrance into such place to break open any outer or inner door or window of any place whether that of the person to be arrested or of any other person, if after notification of his authority and purpose and demand of admittance duly made he cannot otherwise obtain admittance.

Procedure where ingress not obtainable.

26. Whenever a search for anything is or is about to be lawfully made in any house or place in respect of any offence all persons found therein may be lawfully detained in such house or place until the search is completed, and

Search of person in place searched under warrant.

subject to section 30 they may, if the thing sought be in its nature capable of being concealed on the person, be searched for it by or in the presence of a Magistrate or inquirer or police officer not under the rank of inspector.

Power to break open doors and windows for purposes of liberation.

27. Any person authorized to make an arrest may break open any outer or inner door or window of any place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No. unnecessary restraint.

28. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape:

Search of persons arrested.

29. Whenever a person—

(a) is arrested by a peace officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(b) is arrested without warrant or by a private person under a warrant and cannot legally be admitted to bail or is unable to furnish bail,

the peace officer making the arrest, or when the arrest is made by a private person the peace officer to whom he hands over the person arrested, may subject to section 30 search such person and place in safe custody all articles other than necessary wearing apparel found upon him, and any of such articles which there is reason to believe were the instruments or the fruits or other evidence of the crime may be detained until his discharge or acquittal.

Mode of searching women.

30. Whenever it is necessary to cause a woman to be searched the search shall be made by another woman with strict regard to decency.

Power to seize offensive weapons.

31. The person making any arrest under this Code may take from the person arrested any offensive weapons or any instrument capable of being used for committing an offence which he has about his person and shall deliver all weapons and instruments so taken to the court or officer before which or whom the person making the arrest is required by law to produce the person arrested.

B.—ARREST WITHOUT A WARRANT

32. (1) Any peace officer may without an order from a Magistrate and without a warrant arrest any person—

When peace officers may arrest without warrant.

- (a) who in his presence commits any breach of the peace ;
- (b) who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned ;
- (c) having in his possession without lawful excuse (the burden of proving which excuse shall lie on such person) any implement of house-breaking ;
- (d) who has been proclaimed as an offender ;
- (e) in whose possession anything is found which may reasonably be suspected to be property stolen or fraudulently obtained and who may reasonably be suspected of having committed an offence with reference to such thing ;
- (f) who obstructs a peace officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody ;
- (g) reasonably suspected of being a deserter from the Sri Lanka Army, Navy or Air Force ;
- (h) found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence ;
- (i) who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of Sri Lanka, which if committed in Sri Lanka would have been punishable as an offence and for which he is under any law for the time being in force relating to extradition or to fugitive persons or otherwise liable to be apprehended or detained in custody in Sri Lanka.

(2) Anything in this section shall not be held to interfere with or modify the operation of any enactment empowering a peace officer to arrest without a warrant.

Powers of
arrest in an
non cogniz-
able cases.

33. (1) When any person in the presence of a peace officer is accused of committing a non-cognizable offence and refuses on the demand of such peace officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such peace officer in order that his name or residence may be ascertained, and he shall within twenty-four hours from the arrest exclusive of the time necessary for the journey be taken before the nearest Magistrate's Court unless before that time his true name and residence are ascertained, in which case such person shall be forthwith released on his executing a bond for his appearance before a Magistrate's Court if so required.

(2) When any person is accused of committing a non-cognizable offence and a peace officer has reason to believe that such person has no permanent residence in Sri Lanka and that he is about to leave Sri Lanka, he may be arrested by such peace officer and shall be taken forthwith to the nearest Magistrate who may either require him to execute a bond with or without a surety for his appearance before a Magistrate's Court or may order him to be detained in custody until he can be tried.

Pursuit of
offenders
into other
jurisdiction.

34. For the purpose of arresting any person whom he has power to arrest without a warrant a peace officer may pursue any such person into any part of Sri Lanka.

Arrest by
private
persons,
procedure on
such arrest.

35. Any private person may arrest any person who in his presence commits a cognizable offence or who has been proclaimed as an offender, or who is running away and whom he reasonably suspects of having committed a cognizable offence, and shall without unnecessary delay make over the person so arrested to the nearest peace officer or in the absence of a peace officer take such person to the nearest police station. If there is reason to believe that such person comes under the provisions of section 32 a peace officer shall re-arrest him. If there is reason to believe he has committed a non-cognizable offence and he refuses on the demand of a police officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false or is a person whom such officer has reason to believe is about to leave Sri Lanka, he shall be dealt with under the provisions of section 33. If there is no reason to believe that he has committed any offence he shall be at once discharged.

36. A peace officer making an arrest without warrant shall without unnecessary delay and subject to the provisions herein contained as to bail take or send the person arrested before a Magistrate having jurisdiction in the case.

How person arrested is to be dealt with.

37. Any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate.

Person arrested not to be detained more than twenty-four hours.

38. Officers in charge of police stations shall report to the Magistrates' Courts of their respective districts the cases of all persons arrested without warrant by any police officer attached to their stations or brought before them and whether such persons have been admitted to bail or otherwise.

Police to report arrests.

39. Any person who has been arrested without a warrant by a peace officer shall not be discharged except on his own bond or on bail or under the special order in writing of a Magistrate.

Discharge of person arrested.

40. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction he may himself arrest or order any person to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Offence committed in the presence of Magistrate.

41. Any Magistrate may at any time arrest or direct the arrest in his presence within the local limits of his jurisdiction of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest by or in presence of Magistrate.

42. If a person in lawful custody escapes or is rescued the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place, either within or without the jurisdiction where he was so in custody, and deal with such person as he might have done on the original taking.

Power to pursue and retake a person escaping from lawful custody.

43. The provisions of sections 24, 25 and 27 shall apply to arrest under section 42 although the person making the arrest is not acting under a warrant and is not a peace officer having authority to arrest.

Provisions of sections 24, 25 and 27 to apply to arrests under section 42.

CHAPTER V

OF PROCESS TO COMPEL APPEARANCE

A—SUMMONS

Requisites
of summons.

44. (1) Every summons issued by a court under this Code shall be in writing in duplicate and signed by the Registrar issuing the summons or such other officer as such court may appoint and shall be in the prescribed form.

(2) If the person summoned is a person who is believed not to be able to read the language of the court one of such duplicates shall have annexed thereto a translation in a language which such person is believed to be able to read.

(3) There shall be attached to every summons issued to an accused person a copy of the complaint or report or other document upon which proceedings against him have been instituted together with a list specifying the names and addresses of the witnesses for the prosecution, if any.

Summons
how served.

45. (1) The summons shall ordinarily be served by the Fiscal or by a fiscal's officer:

Provided that —

(a) where the proceedings have been instituted by a police officer or where the case is before the High Court or where the summons cannot otherwise be served, such summons shall be served by a police officer; or

(b) where the circumstances require it, the summons may be directed by the court to be served by a Grama Seva Niladhari or by registered post.

(2) The summons shall if practicable be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons which in the case of a person who is believed not to be able to read the language of the court shall have annexed thereto the translation in the language which such person is believed to be able to read.

(3) In the case of a company, or corporation or incorporated association of persons the summons may be served on the managing director, secretary or other like officer, or the person in charge of the principal place of business of such company, corporation or association.

(4) In the case of an unincorporated association of persons the summons may be served by delivering it to the president, secretary or other like officer of such association.

(5) Where the summons cannot be served under subsection (3) or (4) on a company, corporation or association of persons whether incorporated or not, such summons may be served by delivering it by registered post at the registered office, or, if there is no registered office, at the principal place of business of such company, corporation or association.

46. When the person to be summoned cannot by the exercise of due diligence be found the summons may be served by leaving one of the duplicates and the translation where necessary for him with some adult member of his family or with his servant residing with him.

47. If the service prescribed in sections 45 and 46 cannot by the exercise of due diligence be effected the serving officer shall affix one of the duplicates and the translation where necessary of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and in such case the summons, if the court either before or after such affixing so directs, shall be deemed to have been duly served.

48. (1) Where the person summoned is an employee of the State or of a local authority or of a corporation the court issuing the summons shall ordinarily send it in duplicate and a translation where necessary to the head of the department or office in which such person is employed; and such head shall thereupon cause one of the duplicates with the translation where necessary to be served personally on the employee and shall return the other to the court with an endorsement of service.

(2) In this section, "head of department or office" shall mean—

(a) when used with reference to a member of any unit of the Sri Lanka Army, Navy or Air Force, the Commanding Officer of that unit;

(b) when used with reference to a person employed in a local authority, if the local authority is a Municipal Council, the Municipal Commissioner of that Council; if the local authority is an Urban or Town Council, the Secretary of the Council; and if the local authority is a Village Council, the Chairman of that Council;

(c) when used with reference to any other employee of the State or of a corporation, the head of the department of Government or of the corporation as the case may be in which such person is employed.

Service when person summoned cannot be found.

Procedure when personal service cannot be effected.

Service on employees of the State, local authorities or corporations.

Proof of
service.

49. (1) When a summons issued by a court is served an affidavit of such service purporting to be made before an officer duly authorized to administer an oath, or affirmation, or a report of such service purporting to be made by a peace officer, or an advice of delivery issued by the Post Office under the Post Office Rules or in the case mentioned in section 48 the endorsement therein mentioned, as the case may be, shall be admissible in evidence and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) Every person making such report or endorsement as in this section mentioned shall be legally bound to state the truth in such statement or endorsement.

(3) Any person appointed by the Minister in that behalf is hereby authorized to administer the oath or affirmation which is requisite to the making of the affidavit mentioned in subsection (1).

B.—WARRANT OF ARREST

Form of
warrant
of arrest.

50. (1) Every warrant of arrest issued by a court under this Code shall be in writing, signed by a Judge of that court and shall be in the prescribed form.

Continuance
of warrant
of arrest.

(2) Every such warrant shall remain in force until it is cancelled by the court which issued it or until it is executed.

Court may
direct
security to
be taken.

51. (1) A Magistrate's Court issuing a warrant for the arrest of any person may in the case of any non-bailable offence and shall in the case of a bailable offence direct by endorsement on the warrant that if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound;

(c) the day and the hour at which he is to attend before the court.

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the court.

52. (1) A warrant of arrest issued by a court shall ordinarily be directed to the Fiscal of that court and may be executed by all Fiscals, fiscals officers, and peace officers within the limits of their several and respective jurisdictions or in any part of Sri Lanka by any police officer.

Warrants
to whom
directed.

(2) The court issuing the warrant may direct it to any other person or persons by name or office and such person or persons or any police officer may execute the same.

(3) When the warrant is directed to a peace officer by name it shall not be executed by another peace officer unless endorsed to him by name.

(4) When the warrant is directed to more persons than one it may be executed by all or any one or more of them.

53. The person executing a warrant of arrest shall notify the substance thereof to the person arrested, and if so required by the person arrested shall show him the warrant or a copy thereof signed by the person issuing the same.

Notification
of substance
of warrant.

54. The person executing a warrant of arrest shall (subject to the provisions of section 51 as to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person, and he shall endorse on the warrant the time when and the place where the arrest was made.

Person
arrested to be
brought
before court
without
delay.

55. A warrant of arrest may be executed at any place in Sri Lanka.

Where
warrant
may be
executed.

56. (1) When a warrant of arrest is to be executed outside the local limits of the jurisdiction of the court issuing it, the court shall ordinarily forward it by post or otherwise to the Magistrate's Court within the local limits of the jurisdiction of which it is to be executed.

Warrants for
execution
outside
jurisdiction.

(2) A Magistrate of the Magistrate's Court to which the warrant is so forwarded shall endorse his name thereon and if practicable cause it to be executed within the local limits of his jurisdiction.

(3) Whenever there is reason to believe that the delay or publicity occasioned by obtaining the endorsement of the Magistrate within the local limits of whose jurisdiction a warrant is to be executed will prevent such execution, the court issuing the warrant may direct the warrant specially to any person; and a warrant so specially directed shall have effect and may lawfully be executed by such person without such endorsement as aforesaid anywhere within Sri Lanka:

Provided always that upon the execution of such warrant the provisions of section 58 shall apply.

Warrant directed to Fiscal for execution outside jurisdiction.

57. When a warrant directed to a Fiscal is to be executed outside the jurisdiction of the court to which he is appointed he shall endorse it to the Fiscal of the court within the local limits of whose jurisdiction, the warrant is to be executed and shall thereupon forward the same by post or otherwise to such Fiscal, who upon receipt thereof shall cause such warrant to be executed in the same way as if it had been originally directed to him.

Procedure on arrest of person against whom warrant is issued.

58. (1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the court by which it was issued the person arrested shall, unless the court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate's Court within the local limits of the jurisdiction of which the arrest was made or unless security be taken under section 51, be brought before such last-mentioned Magistrate's Court.

(2) The Magistrate's Court before which the person arrested is brought shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his removal in custody to such last-mentioned court:

Provided that if the offence be bailable and the person arrested be ready and willing to give bail to the satisfaction of the court before which he shall have been brought, or a direction has been endorsed under section 51 on the warrant and such person is ready and willing to give the security required by such direction, such last-mentioned court shall take such bail or security as the case may be and forward the bond to the court which issued the warrant.

(3) Anything in this section shall not be deemed to prevent a peace officer from taking security under section 51.

59. Where a police officer has reasonable grounds to believe that a person is one for whose arrest a warrant of arrest has been issued, he may notwithstanding anything to the contrary in this Chapter arrest that person in execution of the warrant although the warrant is not in his possession for the time being.

Arrest possible though warrant is not in hand.

C.—PROCLAMATION AND ATTACHMENT

60. (1) If any court has reason to believe (whether after taking evidence or not) 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 may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

Proclamation for person absconding.

(2) The proclamation shall be published as follows:—

(a) the proclamation drawn in Sinhala and Tamil shall be publicly read in both these languages in some conspicuous place of the town or village in which such person ordinarily resides;

(b) copies in Sinhala and Tamil of the proclamation shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) copies in Sinhala and Tamil of the proclamation shall be affixed to some conspicuous part of the court-house.

(3) A statement by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on such day.

61. (1) The court may after issuing a proclamation under section 60 order the attachment of any property, movable or immovable or both, belonging to the proclaimed person.

Attachment of property of person absconding.

(2) Such order shall authorize the attachment of any property belonging to such person within the local jurisdiction of the court by which it is made, and it shall

authorize the attachment of any property belonging to such person situated outside the jurisdiction of that court when endorsed by a Magistrate within whose jurisdiction such property is situate.

(3) If the property ordered to be attached be debts or other movable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to anyone on his behalf; or

(d) by all or any two of such methods as the court thinks fit.

(4) If the property ordered to be attached be immovable, the attachment under this section shall be made through the Government Agent or Assistant Government Agent of the district in which such property is situate—

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to anyone on his behalf; or

(d) by all or any two of such methods as the court thinks fit.

(5) The powers, duties, and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed in a civil proceeding.

(6) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Minister but it shall not be sold until the expiration of six months from the date of the attachment unless it is subject to speedy and natural decay or the court considers that the sale would be for the benefit of the owner, in either of which cases the court may cause it to be sold whenever it thinks fit.

(7) Notice of every such order of attachment of immovable property shall be forthwith given by the court making the same to the Registrar of Lands for the district in which

such property is situate, who shall forthwith register the same, and no such order shall take effect until the same is registered under the provisions of the Registration of Documents Ordinance.

(8) In the case of the sale of immovable property the conveyance to the purchaser shall be executed by the Government Agent or the Assistant Government Agent of the district in which such property is situate, and a conveyance so executed shall vest such property in the purchaser in like manner as if such conveyance had been executed by the proclaimed person.

62. If within one year from the date of the attachment any person whose property is or has been at the disposal of the Minister under section 61 appears voluntarily or is apprehended and brought before the court by whose order the property was attached and proves to the satisfaction of such court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or if the same has been sold the net proceeds of the sale or if part only thereof has been sold the net proceeds of the sale and the residue of the property, shall after satisfying thereout all costs incurred in consequence of the attachment be delivered to him.

Restoration
of attached
property.

D.—OTHER RULES REGARDING PROCESSES

63. (1) A court may in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror issue, after recording its reasons in writing, a warrant for his arrest—

Issue of
warrant in
lieu of or
in addition
to summons.

(a) if either before the issue of summons or after the issue of the same but before the time fixed for his appearance the court sees reason to believe that he has absconded or will not obey the summons ;
or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Court may require deposit to meet expenses of executing warrant.

(2) The court may make it a condition of the issue of a warrant under subsection (1) that the person applying for it shall deposit such sum as the court may deem reasonable for the purpose of defraying any expenditure that may be incurred in executing the warrant.

Power to take bond for appearance.

64. (1) When any person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or a warrant is present in court, the officer presiding in such court may require such person to execute a bond with or without sureties for his appearance in such court.

(2) When any person who is bound by any bond taken under this Code to appear before a court does not so appear the officer presiding in such court may issue a warrant directing that such person be arrested and produced before him.

Summons to run in any part of Sri Lanka.

65. (1) All summonses to appear may be served in any part of Sri Lanka, provided that such summons shall not be served outside the local limits of the jurisdiction of the court issuing the same unless the same be endorsed by such court with the words "For Service out of the jurisdiction".

(2) Such summons shall not be endorsed with the words "For service out of the jurisdiction" unless the court is satisfied that there are grounds for allowing such service.

(3) The provisions of this Chapter as to the direction and execution of warrants shall apply as near as may be to summonses.

CHAPTER VI

OF PROCESS TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED

A—SUMMONS TO PRODUCE

Summons to produce document or other thing.

66. (1) Whenever any court considers that the production of any document or other thing is necessary or desirable for the purpose of any proceeding under this Code by or before such court it may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it at the time and place stated in the summons.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Anything in this section shall not be deemed to affect the provisions of sections 123 and 130 of the Evidence Ordinance.

67. (1) If any book, letter, post card, telegram or other document in the custody of the Department of Posts and Telecommunications is in the opinion of any court wanted for the purpose of any investigation or proceeding under this Code such court may require the Postal or Telecommunication authorities as the case may be to deliver such document to such person as the court directs.

Procedure
as to
letters,
telegrams,
&c.,

(2) If any such document is in the opinion of the Attorney-General or in the opinion of a police officer not below the rank of Superintendent of Police wanted for any investigation or proceedings under this Code he may require the Postal or Telecommunication authorities as the case may be to cause search to be made for and to deliver such document to him or to any other person duly authorized by him.

B.—SEARCH WARRANTS

68. (1) (a) Where any court has reason to believe that a person to whom a summons under section 66 or a requisition under section 67 has been or might be addressed will not or would not produce or deliver the document or other thing as required by such summons or requisition; or

When search
warrant may
be issued.

(b) where such document or other thing is not known to the court to be in the possession of any person; or

(c) where the court considers that the purposes of any investigation or proceeding under this Code will be served by a general search or inspection,

the court may subject to subsection (3) issue a search warrant in the prescribed form and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereafter contained.

(2) Every such warrant shall remain in force for a reasonable number of days to be specified in such warrant.

(3) A warrant to search for a document in the custody of the Postal or Telecommunication authorities shall be granted only by the High Court.

Power to restrict warrant.

69. The court may if it thinks fit specify in the warrant the particular place or part thereof to which only the search or inspection shall extend, and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Search of house suspected to contain stolen property, forged documents, &c..

70. If a Magistrate's Court upon information and after such inquiry as it thinks necessary has reason to believe—

(a) that any place is used for the deposit or sale of stolen property or of property unlawfully obtained ;
or

(b) that any place is used for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging ; or

(c) that any stolen property or property unlawfully obtained, forged documents, false seals, or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are concealed, kept, or deposited in any place,

it may by warrant authorize the person to whom such warrant is directed—

(i) to enter with such assistance as may be required such place ; and

(ii) to search the same in manner specified in the warrant ; and

(iii) to take possession of any property, documents, seals, stamps, or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false, or counterfeit and also of any such instruments and materials as aforesaid ; and

(iv) to convey such property, documents, seals, stamps, coins, instruments, or materials before a Magistrate's Court or to guard the same on the spot until the offender is taken before a Magistrate's Court or otherwise to dispose thereof in some place of safety ; and

(v) to take into custody and bring before a Magistrate's Court every person found in such place who appears to have been privy to the deposit, sale, or manufacture, or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified, or counterfeited or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

71. When in the execution of a search warrant at any place beyond the local limits of the jurisdiction of the court which issued the same any of the things for which search is made are found, such things together with a list of the same prepared under the provisions hereinafter contained shall be immediately taken before the court issuing the warrant unless such place is nearer to the Magistrate's Court having local jurisdiction therein; in which case the list and things shall be immediately taken before such last-mentioned court, and unless there be good cause to the contrary such last-mentioned court shall make an order authorizing them to be taken to the court issuing the warrant.

Disposal
of things
found in
search
beyond
jurisdiction.

C.—DISCOVERY OF PERSONS WRONGFULLY CONFINED

72. If any Magistrate's Court has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, it may issue a search warrant; and the person to whom such warrant is directed may search for the person so confined and such search shall be made in accordance therewith; and the person if found shall be immediately taken before such court, which shall make such order as in the circumstances of the case seems proper.

Search for
persons
wrongfully
confined.

D.—GENERAL PROVISION RELATING TO SEARCHES

Direction,
&c., of
search
warrants.

73. The provisions of sections 20, 50, 52, 56 and 57 shall so far as may be apply to all search warrants issued under this Chapter.

Persons in
charge of
closed
place to
allow
search.

74. (1) Whenever any place liable to search or inspection under this Chapter is closed any person residing in or being in charge of such place shall on demand of the person executing the warrant and on production of the warrant allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained the person executing the warrant may proceed in manner provided by section 25.

Officer to
make list
of things
seized.

75. The person executing the search warrant shall make a list of all things seized in the course of the search and of the places in which they are respectively found and shall sign such list.

Occupant
of place
searched
may
attend.

76. The occupant of the place searched or some person on his behalf shall in every instance be permitted to attend during the search and a copy of the list prepared under section 75, signed by the person executing the warrant, shall be delivered to such occupant or person.

E.—MISCELLANEOUS

Court may
impound
things
produced.

77. Any court may if it thinks fit impound any document or other thing produced before it under this Code,

Search
warrants
may be
endorsed
by peace
officer.

78. (1) A search warrant directed or endorsed to a peace officer may, if he is not able to proceed in person, be executed by any other peace officer.

(2) In such case the name of such peace officer shall be endorsed upon the warrant by the officer to whom it is directed or endorsed.

Powers of
Magistrate
when present
at search.

79. (1) The Magistrate by whom a search warrant is issued may attend personally for the purpose of seeing that the warrant is duly executed.

(2) Any Magistrate may orally direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant.

PART IV

PREVENTION OF OFFENCES

CHAPTER VII

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

**A.—SECURITY FOR KEEPING THE
PEACE ON CONVICTION**

80. (1) Whenever any person is convicted of any offence which involves a breach of the peace or of committing criminal intimidation by threatening injury to person or property, or of being a member of an unlawful assembly, and the court before which such person is convicted is of opinion that it is proper to require such person to execute a bond for keeping the peace, such court may at the time of passing sentence on such person order him to execute a bond for a sum proportionate to his means with or without sureties for keeping the peace during such period in each instance as it thinks fit to fix, not exceeding two years if the sentence or order be by a Magistrate's Court or three years if the sentence or order be by the High Court.

Security for
keeping the
peace on
conviction.

(2) If the conviction is set aside on appeal or otherwise the bond so executed shall become void.

**B.—SECURITY FOR KEEPING THE PEACE IN OTHER
CASES AND SECURITY FOR GOOD BEHAVIOUR**

81. Whenever a Magistrate receives information that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace within the local limits of the jurisdiction of the court of such Magistrate, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits the Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period not exceeding two years as the court thinks fit to fix.

Security for
keeping the
peace in
other cases.

82. Whenever a Magistrate receives information—

(a) that any person is taking precautions to conceal his presence within the local limits of the jurisdiction of the court of such Magistrate and that there is reason to believe that such person is taking such precautions with a view to committing an offence;

or

Security
for good
behaviour
from
suspected
persons,
&c.

(b) that there is within such limits a person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself,

such Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding two years as the court thinks fit to fix.

Security
for good
behaviour
from habitual
offenders.

83. Whenever a Magistrate receives information that any person within the local limits of the jurisdiction of the court of such Magistrate is an habitual robber, housebreaker, or thief or an habitual receiver of stolen property knowing the same to have been stolen or that he habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury or that he is an habitual protector or harbourer of thieves or that he is an habitual aider in the concealment or disposal of stolen property or that he is a notorious bad liver or is a dangerous character, such Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding two years as the Magistrate thinks fit to fix.

Summons or
warrant in
case of
person not
so present.

84. When a Magistrate acting under section 81 or section 82 or section 83 deems it necessary to require any person to show cause under such section he shall if such person is not present in court issue a summons requiring him to appear, or when such person is in custody but not present in court a warrant directing the officer in whose custody he is to bring before the court:

Provided that whenever it appears to such Magistrate upon the report of a peace officer or upon other information (the substance of which report or information shall be recorded by such Magistrate) that there is reason to fear the commission of a breach of the peace and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Form of
summons or
warrant.

85. Every summons or warrant issued under section 84 shall contain a brief statement of the substance of the information on which such summons or warrant is issued.

86. (1) When any person appears or is brought before a Magistrate in compliance with or in execution of a summons or warrant issued under section 84 the Magistrate shall proceed to inquire into the truth of the information upon which he has acted and to take such further evidence as may appear necessary.

Inquiry as to the truth of information.

(2) Such inquiry shall be held as nearly as may be practicable in the manner hereinafter prescribed for conducting trials in summary cases before Magistrates' Courts.

(3) For the purpose of this section the fact that a person is an habitual offender or is such a person as is mentioned in section 83 may be proved by evidence of general repute or otherwise.

(4) Before commencing the inquiry the Magistrate may for reasons to be recorded by him, order such person to execute a bond for keeping the peace or for maintaining good behaviour pending the termination of the inquiry. An appeal shall not lie against any order made under this subsection.

87. If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond with or without sureties, the Magistrate shall make an order accordingly;

Order to give security.

Provided—

(a) that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(b) that when the person in respect of whom the inquiry is made is a minor the bond shall be executed only by his sureties.

88. If upon such inquiry it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purpose of the inquiry shall release him, or if such person is not in custody shall discharge him.

Discharge of person informed against.

**C—PROVISIONS APPLICABLE TO ALL ORDERS TO
FURNISH SECURITY**

Imposition
of term of
imprisonment
in default of
security.

89. (1) At the time of making an order requiring security under the preceding sections of this Chapter, the court shall direct that in default of giving the security the person in respect of whom the order is made shall be imprisoned for such term as the court may think fit, not exceeding two years where the court is the High Court, or one year where the court is a Magistrate's Court :

Allowance of
time to give
security.

Provided that the court may, if it thinks fit so to do, allow time not exceeding one month for furnishing the security :

Provided further that where the court is of opinion that time should not be allowed it shall record the reasons for refusal of time.

(2) The provisions of the provisos to subsection (1) shall not apply to an order made in respect of a person who is, at the time the order is made, sentenced to or undergoing a sentence of imprisonment.

Commence-
ment of
period for
which
security
is required.

90. The period for which security is required by an order made under the preceding sections of this Chapter shall commence—

- (a) where time has not been allowed under section 89, on the date of such order ;
- (b) where time has been allowed under that section, on the date on which the time so allowed expires ;
- (c) where the order is in respect of a person who is, at the time the order is made, sentenced to or undergoing a sentence of imprisonment, on the date on which such sentence expires.

Contents
of bond.

91. (1) The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour as the case may be ; and in the latter case the commission or attempt to commit or the abetment of any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Power to
reject
sureties.

(2) A court may refuse to accept any surety offered on the ground that for reasons to be recorded by the court such surety is an unfit person.

Commitment
to prison
for default
in giving
security.

92. (1) If any person ordered to give security under the preceding sections of this Chapter does not give such security on or before the date on which the period for which such security is to be given commences, he shall be committed to prison to undergo the term of imprisonment

imposed under section 89, or, if he is already in prison, be detained in prison until such term expires, or until, before the expiration of such term, he gives the security to the court which made the order requiring it, or to the superintendent or jailer of the prison in which he is detained.

(2) Imprisonment for failure to give security for keeping the peace shall be simple.

Simple imprisonment for failure to give security for the peace.

(3) Imprisonment for failure to give security for good behaviour may be rigorous or simple as the court in each case directs.

Rigorous or simple imprisonment for failure to give security for good behaviour.

93. (1) Whenever a court is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person the court may order such person to be discharged.

Power to release person imprisoned for failing to give security.

(2) A court other than the Supreme Court or Court of Appeal shall not exercise this power except in cases where the imprisonment is under its own order.

D.—DISCHARGE OF SURETIES

94. (1) Any surety for the peaceable conduct or good behaviour of another person under the foregoing or any other provision of this Code or for the due attendance of any person before a court or for the due performance of any stipulations by any person, may at any time apply to the court which directed the execution of the bond to cancel it.

Discharge of sureties.

(2) On such application being made the Court may issue summons or warrant as it thinks fit requiring the person for whom such surety is bound, to appear or to be brought before it.

(3) When such person appears or is brought before the court such court may cancel the bond and in that event shall order such person to give for the unexpired portion of the term or unfulfilled stipulations of such bond, fresh security of the same description as the original security. Every such order shall have the same effect as the original order.

(4) The provisions of subsection (5) of section 408 shall also apply to any application by a surety for the peaceable conduct of good behaviour of another person to have the bond cancelled.

CHAPTER VIII

UNLAWFUL ASSEMBLY

Dispersal of
unlawful
assembly.

95. (1) Any Magistrate or police officer not below the rank of Inspector of Police may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse, and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Use of civil
force to
disperse
assembly.

(2) If upon being so commanded any such assembly does not disperse or if without being so commanded it conducts itself in such a manner as to show a determination not to disperse, the Magistrate or the police officer may proceed to disperse such assembly by the use of such force as is reasonably necessary to disperse the assembly and may require the assistance of any person (not being a member of the Army, Navy or Air Force, whether of Sri Lanka or of any other country, acting as such) for the purpose of dispersing such assembly and if necessary arresting and confining the persons who form part of it in order to disperse such assembly or that they may be punished according to law.

Use of mili-
tary force
to disperse
assembly.

(3) If any such assembly cannot be otherwise dispersed and it is necessary for the public security that it should be dispersed, a Magistrate or the Government Agent of the District or any police officer not below the rank of Superintendent of Police may cause it to be dispersed by requiring any commissioned or non-commissioned officer in command of any personnel of the Sri Lanka Army,

Navy or Air Force, to disperse such assembly by military force and to arrest and confine such persons as form part of it as may be necessary in order to disperse the assembly or to have them punished according to law. Every such commissioned or non-commissioned officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force and do as little injury to person and property as may be consistent with dispersing the assembly and arresting and detaining such persons.

96. When the public security is manifestly endangered by any such assembly and when a Magistrate, the Government Agent or a police officer not below the rank of Superintendent of Police cannot be communicated with, any commissioned officer of the Sri Lanka Army, Navy or Air Force may disperse such assembly by military force and may arrest and confine any persons forming part of it in order to disperse such assembly or that they may be punished according to law; but if while he is acting under this section it becomes practicable for him to communicate with the Magistrate or Government Agent or a police officer not below the rank of Superintendent of Police he shall do so and shall thereafter obey the instructions of such Magistrate or Government Agent or police officer as to whether he shall or shall not continue such action.

Power of commissioned military officers to disperse assembly.

97. (1) A prosecution shall not be instituted against any Magistrate, Government Agent, police officer or personnel of the Sri Lanka Army, Navy or Air Force or any person assisting a police officer in the dispersal of an assembly under this Chapter, for any act purporting to be done under this Chapter in any court except with the sanction of the Attorney-General.

Protection for acts done under this Chapter.

(2) (a) A Magistrate, Government Agent, police officer or member of the Sri Lanka Army, Navy or Air Force or any other person acting under this Chapter in good faith; and

(b) a member of the Sri Lanka Army, Navy or Air Force doing any act in obedience to any order which under military law he was bound to obey,

shall not be liable in civil or criminal proceedings for any act purported to be done under this Chapter.

CHAPTER IX

PUBLIC NUISANCES

A—ORDERS FOR REMOVAL OR ABATEMENT IN CASES OF NUISANCE

Conditional
order for
removal of
nuisance.

98. (1) Whenever a Magistrate considers on receiving a report or other information and on taking such evidence (if any) as he thinks fit—

(a) that any unlawful obstruction or nuisance should be removed from any way, harbour, lake, river, or channel which is or may be lawfully used by the public or from any public place ; or

(b) that any trade or occupation or the keeping of any goods or merchandise should by reason of its being injurious to the health or physical comfort of the community be suppressed or removed or prohibited ;
or

(c) that the construction of any building or the disposal of any substance should as being likely to occasion conflagration or explosion be prevented or stopped ;
or

(d) that any building or tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by and that in consequence its removal, repair, or support is necessary ; or

(e) that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,

such Magistrate may make a conditional order requiring that the person causing such obstruction or nuisance or carrying on such trade or occupation or keeping any such goods or

merchandise or owning, possessing, or controlling such building, substance, tree, tank, well or excavation shall within a time to be fixed by such order—

- (i) remove such obstruction or nuisance ; or
- (ii) suppress or remove such trade or occupation ; or
- (iii) remove such goods or merchandise ; or
- (iv) prevent or stop the construction of such building ; or
- (v) remove, repair, or support it ; or
- (vi) alter the disposal of such substance ; or
- (vii) remove such tree ; or
- (viii) fence such tank, well, or excavation as the case may be.

(2) Any person against whom a conditional order has been made under subsection (1) may appear before the Magistrate making that order or any other Magistrate of that court before the expiration of the time fixed by that order and move to have the order set aside or modified in manner hereinafter provided.

(3) Any order duly made under this section shall not be called in question in any civil court.

(4) For the purpose of this section a "public place" includes also property belonging to the State or a corporation or vested in any public officer or department of State for public purposes and ground left unoccupied for sanitary or recreative purposes.

99. (1) The order and any other order or notice made or given under this Chapter shall if practicable be served on the person against whom it is made or to whom it is to be given in manner herein provided for service of a summons.

Service or
notification
of order.

(2) If such order cannot be so served a copy thereof shall be posted up at such place or places as the court may consider fittest for conveying the information to such person.

100. (1) The person against whom such order is made shall within the time specified therein—

Person to
whom order
is addressed
to obey or
show cause.

(a) perform the act directed thereby ; or

(b) act under subsection (2) of section 98.

Consequence
of failing
to do so.

(2) If such person does not perform such act or appear and move to have the order set aside or modified as required by subsection (1) he shall be liable to the penalty prescribed in that behalf in section 185 of the Penal Code and the order shall be made absolute :

Provided that if such person be a corporate body every director thereof shall be liable to the penalty herein before prescribed unless such director proves that such default was not occasioned by any act of his or by any omission on his part.

Procedure in
case of
appearance.

101. (1) If such person appears and moves to have the order set aside or modified the Magistrate shall take evidence in the matter.

(2) If the Magistrate is satisfied that the order is not reasonable and proper it shall either rescinded the same or modify it in accordance with the requirements of the case, and in the latter case the order as modified shall be made absolute.

(3) If the Magistrate is not so satisfied the order shall be made absolute.

Procedure on
order being
made
absolute.

102. When an order has been made absolute under section 100 or section 101 the Magistrate shall give notice of the same to the person against whom the order was made and shall further require him to perform the act directed by the order within a time specified in the notice and inform him that in case of disobedience he will be liable to the penalties provided by subsection (2) of section 100.

Consequence
of disobe-
dience to
order.

103. (1) If such act is not performed within the time specified in the notice issued under section 102 the Magistrate may cause it to be performed and may recover the costs of performing it either by the sale of any building, goods, or other property removed by his order or by the distress and sale of any other movable property of such person within or without the local limits of the jurisdiction of his court. If such other property is without such limits the order shall authorize its attachment and sale when endorsed by a Magistrate within the local limits of whose jurisdiction the property be attached is found.

(2) A suit shall not lie in respect of anything done in good faith under this section.

104. (1) If the Magistrate making an order under section 98 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public he may issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

Injunction pending inquiry.

(2) In default of such person forthwith obeying such injunction the Magistrate may use or cause to be used such means as he thinks fit to obviate such danger or to prevent such injury.

(3) A suit shall not lie in respect of anything done in good faith by a Magistrate under this section.

105. A Magistrate may order any person not to repeat or continue a public nuisance as defined in the Penal Code or any special or local law.

Magistrate may prohibit continuance of public nuisances.

B—TEMPORARY ORDERS IN URGENT CASES OF NUISANCE

106. (1) In cases where in the opinion of a Magistrate immediate prevention or speedy remedy is desirable the Magistrate may by a written order stating the material facts of the case and served in manner provided by section 99 direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if the Magistrate considers that such direction is likely to prevent or tends to prevent obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

Power to issue absolute order at once in urgent cases of nuisance.

(2) An order under subsection (1) may in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the persons against whom the order is directed be made *ex parte*.

(3) An order under subsection (1) may be directed to a particular person or to the public generally when frequenting or visiting a particular place, and in the latter case a copy of the order shall be posted up as provided by subsection (2) of section 99.

(4) Any Magistrate may rescind or alter any order made under subsection (1) by himself or by his predecessor in office.

(5) An order under this section shall not remain in force for more than fourteen days from the making thereof unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the Minister by notification in the *Gazette* otherwise directs.

CHAPTER X

PREVENTIVE ACTION OF PEACE OFFICERS

Peace officers to prevent cognizable offence.

107. (1) Every peace officer may interpose for the purpose of preventing and shall to the best of his ability prevent the commission of any cognizable offence.

Information of attempt to commit such offence.

(2) Every peace officer receiving information of an attempt to commit any cognizable offence shall communicate such information to the officer to whom he is immediately subordinate or to some other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Peace officers may arrest without order or warrant to prevent such offence.

(3) A peace officer knowing of an attempt to commit any cognizable offence may arrest without orders from a Magistrate and without a warrant the person so attempting if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Prevention of injury to public property.

(4) A peace officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property movable or immovable or the removal of injury of any public landmark or buoy or other mark used for navigation.

Assistance to inspectors of weights and measures.

(5) It shall be the duty of every peace officer to give immediate information to an inspector of weights and measures of any breach of any provision of any enactment for the time being in force relating to weights and measures and at the request of any such inspector to assist him in carrying out the provisions of any such enactment.

PART V

INVESTIGATION OF OFFENCES

CHAPTER XI

INFORMATION TO POLICE OFFICERS AND INQUIRERS AND THEIR POWERS TO INVESTIGATE

Appointment of inquirers.

108. The Minister may appoint any person by name or office to be an inquirer for any area the limits of which shall be specified in such appointment.

109. (1) Every information relating to the commission of an offence may be given orally or in writing to a police officer or inquirer.

Information of an offence.

(2) If such information is given orally to a police officer or to an inquirer, it shall be reduced to writing by him in the language in which it is given and be read over to the informant :

Provided that if it is not possible for the officer or inquirer to record the information in the language in which it is given the officer or inquirer shall request that the information be given in writing. If the informant is unable to give it in writing, the officer or inquirer shall record the information in one of the national languages after recording the reasons for doing so and shall read over the record to the informant or interpret it in the language he understands.

(3) Every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it and such information or a copy thereof as is feasible shall be entered without delay by such police officer or inquirer in a book hereinafter referred to as "the Information Book" to be kept by the officer in charge of the police station at his police station or by the inquirer as the case may be. Such Information Book shall be in such form as the Minister may provide by regulations made in that behalf :

Provided that until the Minister by regulations provides the form of the Information Book, the form or forms in use on the day immediately preceding the appointed date shall continue to be valid for use.

(4) If the police officer who receives the information is not himself the officer in charge of the police station, then such police officer shall forthwith report the facts of such information to the officer in charge of the police station.

(5) If from information received or otherwise an officer in charge of a police station or inquirer has reason to suspect the commission of a cognizable offence or to apprehend a breach of the peace he shall forthwith send a report of the same to the Magistrate's Court having jurisdiction in respect of such offence, or, in the case of an officer in charge of police station, to his own immediate superior, and shall proceed in person to the spot to

Procedure where cognizable offence is suspected or breach of the peace apprehended

investigate the facts and circumstances of the case and to take such measures as may be necessary for the discovery and arrest of the offender:

Provided that an officer in charge of a police station may depute one of his subordinate officers to proceed to the spot to make such investigation and take such measures as may be necessary for the discovery and arrest of the offender, or if it appears to him that there is no sufficient ground for entering on an investigation he shall not be bound to investigate the case.

Power to
police
officer or
inquirer
to require
attendance
of persons
able to give
information.

(6) Any police officer or inquirer making an investigation under this Chapter may by order in writing require the attendance before himself of any person being within the limits of the station of such police officer or any adjoining station or within the local limits of the jurisdiction of such inquirer who, from the information given or otherwise, appears to be acquainted with the circumstances of the case, and such person shall attend as so required.

If any person when required to attend by an inquirer refuses or fails to do so, the inquirer may thereupon in his discretion issue a warrant to secure the attendance of such person as required by such order as aforesaid.

Examination
of witnesses
by police
or inquirer.

110. (1) Any police officer or inquirer making an investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and shall reduce into writing any statement made by the person so examined, but any oath or affirmation shall not be administered to any such person. The whole of such statement shall be recorded in full in the manner set out in section 109 (2). If the police officer or inquirer asks any question in clarification such question and the answer given thereto shall be recorded in form of question and answer. Such record shall be shown or read to such person or if he does not understand the language in which it is written, it shall be interpreted to him in a language he understands and he shall be at liberty to explain or add to his statement. The person making the statement shall then sign that statement immediately at the place where the statement is concluded. The police officer or inquirer recording the statement shall append below each statement recorded by him the following certificate:—

“Ihereby declare that I have faithfully and accurately recorded the statement of the abovenamed”

If such statement is not recorded in the Information Book, a true copy thereof shall as soon as may be convenient be entered by such police officer or inquirer in the Information Book. Any alterations in such statement shall be initialled by the person making it and any portion of the statement that requires to be deleted as a result of the alteration shall be scored off in such a manner as would not make that portion illegible.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer or inquirer other than questions which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) A statement made by any person to a police officer in the course of any investigation may be used in accordance with the provisions of the Evidence Ordinance except for the purpose of corroborating the testimony of such person in court:

Provided that a statement made by an accused person in the course of any investigation shall only be used to prove that he made a different statement at a different time:

Anything in this subsection shall not be deemed to apply to any statement falling within the provisions of section 27 of the Evidence Ordinance or to prevent any statement made by a person in the course of any investigation being used as evidence in a charge under section 180 of the Penal Code.

(4) Any criminal court may send for the statements recorded in a case under inquiry or trial in such court and may use such statements or information, not as evidence in the case, but to aid it in such inquiry or trial. Save as otherwise provided for in section 444 neither the accused nor his agents shall be entitled to call for such statements, nor shall he or they be entitled to see them merely because they are referred to by the court but if they are used by the police officer or inquirer or witness who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer or inquirer or witness the provisions of the Evidence Ordinance, section 161 or section 145, as the case may be, shall apply :

Statements
to police
officer or
inquirer
to be used
in accordance
with
Evidence
Ordinance.

Provided that where a preliminary inquiry under Chapter XV is being held in respect of any offence, such statements of witnesses as have up to then been recorded shall, on the application of the accused, be made available to him for his perusal in open court during the inquiry.

Inducement
not to be
offered.

111. Any inquirer or police officer shall not offer or make or cause to be offered or made any inducement, threat, or promise to any person charged with an offence to induce such person to make any statement with reference to the charge against such person. But any inquirer or police officer shall not prevent or discourage by any caution or otherwise any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

Search by
police
officer or
inquirer.

112. (1) Whenever any officer in charge of a police station or an inquirer making an investigation in a cognizable case considers that the production of any document or thing is necessary to the conduct of the investigation, and there is reason to believe that a person to whom summons or order under section 66 has been or might be issued will not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer or inquirer may search or cause search to be made for the same in any place.

(2) Such officer or inquirer shall if practicable conduct the search in person.

(3) If he is unable to conduct the search in person and there is no other person competent to make the search present at the time, he may require any Grama Seva Niladhari to make the search and he shall deliver to such Grama Seva Niladhari an order in writing specifying the document or other thing for which search is to be made and the place to be searched, and such Grama Seva Niladhari may thereupon search for such thing in such place.

(4) The provisions of this Code as to search warrants and searches thereupon shall so far as may be apply to a search made under this section.

113. When any subordinate police officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police station.

Duty of subordinate officer to report to officer in charge of station.

114. If upon an investigation under this Chapter it appears to the officer in charge of the police station or the inquirer that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate's Court, such officer or inquirer shall if such person is in custody release him on his executing a bond with or without sureties as such officer or inquirer may direct to appear if and when so required before a Magistrate's Court having jurisdiction to try or inquire into the offence.

Release of accused if evidence deficient.

115. (1) Whenever an investigation under this Chapter cannot be completed within the period of twenty-four hours fixed by section 37, and there are grounds for believing that further investigation is necessary the officer in charge of the police station or the inquirer shall forthwith transmit to the Magistrate having jurisdiction in the case a report of the case, together with a summary of the statements, if any, made by each of the witnesses examined in the course of such investigation relating to the case, and shall at the same time forward the suspect to such Magistrate.

Procedure when investigation cannot be completed in twenty-four hours.

(2) The Magistrate before whom a suspect is forwarded under this section, if he is satisfied that it is expedient to detain the suspect in custody pending further investigation, may after recording his reasons, by warrant addressed to the superintendent of any prison authorize the detention of the suspect for a total period of fifteen days and no more. The provisions of section 264 shall apply to every such warrant. If at the end of the said period of fifteen days pro-

ceedings are not instituted the Magistrate may subject to subsection (3) either discharge the suspect or require him to execute a bond to appear if and when so required.

(3) Subject to the provisions of the Criminal Procedure (Special Provisions) Law, No. 15 of 1978, for so long as that Law is in force, a Magistrate shall not release on bail or otherwise any person who has—

(a) surrendered himself to court, or

(b) been arrested,

consequent on an allegation that he has committed or has been concerned in committing or is suspected to have committed or to have been concerned in committing an offence punishable under sections 114, 191 and 296 of the Penal Code:

Provided however that such person shall be released on bail if proceedings are not instituted against him in a Magistrate's Court or the High Court before the expiration of a period of three months from the date he surrenders to court or is arrested unless the High Court on application made by the Attorney-General directs otherwise:

Provided further that the High Court may in special circumstances release such person on bail before or after the expiration of the period of three months referred to in the preceding provisions of this subsection.

(4) During the period that a suspect is in the lawful custody of a superintendent of prison, a court may upon an application in that behalf made by the police officer in charge of a police station authorize such or any other police officer to have access during reasonable hours to such suspect for the purpose of the investigation. The court may on an application in that behalf being made by an officer in charge of a police station authorize him or any other named police officer to take the suspect in the company of an officer

of the Prisons Department from place to place (other than to a police station) if in the opinion of such court such action is considered necessary for the purpose of the investigation :

Provided that during the period a police officer has access to a suspect or takes him from place to place under the provisions of this subsection, the suspect shall be deemed to be an accused person in the custody of such police officer for the purpose of the application of subsection (1) of section 27 of the Evidence Ordinance.

116. (1) If upon an investigation under this Chapter it appears to the officer in charge of the police station or the inquirer that the information is well founded or that further investigation is necessary such officer or inquirer shall forward the suspect under custody before the Magistrate's Court having jurisdiction in the case, or if the offence is bailable and the suspect is able to give security, shall take security from him for his appearance before such court.

Duty of officer or inquirer to forward case to a Magistrate's Court if sufficient information is well founded or if further investigation is necessary.

(2) When the officer in charge of a police station or an inquirer forwards a suspect before a Magistrate's Court or takes security for his appearance, he shall send to such court any weapon or other article or document or specimen or sample which it may be necessary to produce before such court, and shall require the complainant (if any) and so many of the persons who appear to such an officer or inquirer to be acquainted with the circumstances of the case as he may think necessary to execute a bond to appear before the Magistrate's Court therein named and give evidence in the matter of the charge against the suspect.

(3) The Magistrate may on application made by a police officer or inquirer forward any such weapon or other article or document or specimen or sample to the Government Analyst, Government Examiner of Questioned Documents, Registrar of Finger Prints or Government medical officer as the case may be for analysis and report to the court.

(4) The officer or inquirer in whose presence the bond referred to in subsection (1) or subsection (2) is executed shall send such bond to the Magistrate's Court.

(5) If any complainant or witness refuses to execute such bond, such officer or inquirer shall report the same to the Magistrate's Court having jurisdiction which may thereupon in its discretion issue a warrant or summons to secure the

attendance of such complainant or witness before itself to give evidence in the matter of the charge against the suspect.

Additional powers of inquirers.

117. Every inquirer shall, in addition to the powers herein before mentioned within the local limits of his jurisdiction, have the following powers :—

- (a) power to arrest or direct the arrest in his presence of any offender ;
- (b) power to issue a warrant or to order the removal of an accused person arrested under a warrant.

Powers of police officers and inquirers in non-cognizable cases.

118. (1) Every inquirer and police officer shall have power, upon receiving an order from a Magistrate, to investigate a non-cognizable offence and to exercise all the powers conferred upon them by this Chapter in respect of such investigation.

(2) Subject to the provisions of section 37, every inquirer and officer in charge of a station shall have power to authorize the detention of a person during an investigation.

Magistrate may withdraw case from inquirer.

119. Any Magistrate having jurisdiction to hold an inquiry into any offence which is being investigated by an inquirer may at any stage withdraw the case from such inquirer and himself inquire into and try such case or commit the same for trial.

Investigation to be completed without delay.

120. (1) Every investigation under this Chapter shall be completed without unnecessary delay. Where such investigation cannot be completed within fifteen days the officer in charge of the police station or the inquirer shall transmit to the Magistrate's Court having jurisdiction in the case, a report of the facts and the progress of the investigation at the end of the fifteen days and thereafter at the end of every period of fifteen days until completion of the investigation.

(2) The detention ordered under subsection (3) of section 115 shall be for periods of fifteen days at a time.

(3) As soon as the investigation is completed the officer in charge of the police station shall forward to such court a report in the prescribed form. If in the report there is no allegation that the suspect has committed or been concerned in the committing of any offence the Magistrate shall discharge him. If the report alleges that the suspect has committed or been concerned in committing an offence he shall be prosecuted in accordance with the provisions of this Code.

121. Anything in this Chapter contained shall not be construed to restrict the powers or duties vested in or imposed on police officers by this Code or any other enactment.

Powers of this chapter to be cumulative.

122. (1) Where any officer in charge of a police station considers that the examination of any person by a medical practitioner is necessary for the conduct of an investigation he may, with the consent of such person, cause such person to be examined by a Government medical officer. The Government medical officer shall report to the police officer setting out the result of the examination.

Examination by medical practitioner.

(2) Where the person referred to in subsection (1) does not consent to being so examined, the police officer may apply to a Magistrate within whose jurisdiction the investigation is being made for an order authorizing a Government medical officer named therein to examine such person and report thereon. Where such an order is made such person shall submit to an examination by such Government medical officer who shall report to the Magistrate setting out the result of the examination.

123. (1) Where any officer in charge of a police station is of opinion that it is necessary to do so for the purpose of an investigation, he may cause any finger, palm or foot impression or impression of any part of the body of any person suspected of the offence under investigation or any specimen of saliva, urine, hair or finger nail or any scraping from a finger nail of such person to be taken with his consent.

Taking of finger impressions, specimens of hair &c. of suspect person.

(2) Where the person referred to in subsection (1) does not consent to such impression, specimen or scraping being taken, such police officer may apply to the Magistrate's Court within whose jurisdiction the investigation is being made for an order authorizing a police officer to take such impression, specimen or scraping and such person shall comply with such order.

(3) Any officer in charge of a police station may, where it is necessary for the purpose of the investigation to compare any handwriting, cause a specimen of the handwriting of any person to be taken with his consent.

(4) Where such person refuses to give a specimen of his handwriting the officer in charge of the police station may apply to the Magistrate's Court within whose jurisdiction the investigation is being made for an order requiring such person to give a specimen of his handwriting, and such person shall comply with such order.

Magistrate
to assist
investigation.

124. Every Magistrate to whom application is made in that behalf shall assist the conduct of an investigation by making and issuing appropriate orders and processes of court, and may, in particular hold, or authorize the holding of, an identification parade for the purpose of ascertaining the identity of the offender, and for such purpose require a suspect or any other person to participate in such parade, and make or cause to be made a record of the proceedings of such parade.

Senior police
officer may
take over
investigation.

125. Anything to the contrary in this or any other law notwithstanding it shall be lawful for any police officer not below the rank of Assistant Superintendent of Police to take over at any stage any investigation under this Chapter for any offence and to conduct and direct such investigation and for such purpose to cause the investigation or any part of it to be conducted by any police officer of his choice or by a team of specially selected police officers drawn from any part of the island.

CHAPTER XII

STATEMENTS TO MAGISTRATES OR PEACE OFFICERS

No
inducement
to be
offered.

126. Except as provided in Chapter XXI any peace officer or person in authority shall not offer or make or cause to be offered or made any inducement, threat, or promise to any person charged with an offence to induce such person to make any statement having reference to the charge against such person. But any peace officer or other person shall not prevent or discourage by any caution or otherwise any person from making any statement which he may be disposed to make of his own free will.

Power to
record
statements
and
confessions.

127. (1) Any Magistrate may record any statement made to him at any time before the commencement of any inquiry or trial.

(2) Such statement shall be recorded and signed in the manner provided in section 277 and dated, and shall then be forwarded to the Magistrate's Court by which the case is to be inquired into or tried.

(3) A Magistrate shall not record any such statement being a confession unless upon questioning the person making it he has reason to believe that it was made voluntarily, and when he records any such statement he shall make a memorandum at the foot of such record to the following effect :—

I believe that this statement was voluntarily made. It was taken in my presence and hearing and was read over by me to the person making it and admitted by him to be correct, and it contains accurately the whole of the statement made by him.

(Signed) A. B.
Magistrate of the Magistrate's Court

PART VI

PROCEEDINGS IN PROSECUTIONS

CHAPTER XIII

**OF THE JURISDICTION OF THE CRIMINAL COURTS IN
INQUIRIES AND TRIALS**

A—PLACE OF INQUIRY OR TRIAL

128. (1) Every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed.

Ordinary
place of
inquiry
and trial.

(2) Any Magistrate's Court within the local limits of the jurisdiction of which an accused may be or be found shall have jurisdiction respectively in all cases of offences otherwise within their respective jurisdictions which have been committed on the territorial waters of Sri Lanka.

Any Magis-
trate's Court
to have
jurisdiction
over offences
committed on
territorial
waters.

(3) An offence committed on the territorial waters of Sri Lanka to which subsection (2) is not applicable or an offence committed on the high seas, or on board any ship or upon any aircraft may be tried or inquired into by the Magistrate's Court of Colombo if it otherwise has jurisdiction or on indictment by the High Court.

129. When a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued, such offence may be inquired into or tried by any court within the local limit of the jurisdiction of which any such thing has been done or any such consequence has ensued.

Accused is
triable in
district
where act
is done or
consequence
ensues.

Illustrations

(a) A is wounded within the local limits of the jurisdiction of the Magistrate's Court of X and dies within those of the Magistrate's Court of Z; the offence of culpable homicide of A may be inquired into by the Magistrate's Court of either X or Z.

(b) A is wounded within the local limits of the jurisdiction of the Magistrate's Court of X and is during ten days within the local limits of the jurisdiction of Magistrate's Court Y, and during ten days more within the local jurisdiction of Magistrate's Court Z, unable in the local limits of the jurisdiction of Magistrate's Court Y or Z to follow his ordinary pursuits; the offence of unlawfully causing grievous hurt to A may be tried by the Magistrate's Court of either X, Y, or Z.

- (c) A is put in fear of injury within the local limits of the jurisdiction of the Magistrate's Court of X and is thereby induced within the local limits of the jurisdiction of the Magistrate's Court of Y to deliver property to the person who put him in fear; the offence of extortion committed on A may be tried by the Magistrate's Court of either X or Y.

Place of trial where act is an offence by reason of relation to other offence.

130. When an act is an offence by reason of the relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a court within the local limits of the jurisdiction of which either act was done.

Illustrations

(a) A charge of abetment may be inquired into or tried either by the court within the local limits of whose jurisdiction the abetment was committed or by the court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be tried either by the court within the local limits of whose jurisdiction the goods were stolen or by the court within the local limits of whose jurisdiction any of them at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be tried by the Magistrate's Court within the local limits of whose jurisdiction the wrongful concealing or by the Magistrate's Court within the local limits of whose jurisdiction the kidnapping took place.

Escape from custody.

131. (1) The offence of having escaped from custody may be tried either by the court within the local limits of whose jurisdiction the person charged is or by the court within the local limits of whose jurisdiction the offence was committed.

Criminal misappropriation and criminal breach of trust.

(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried either by the court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person or by the court within the local limits of whose jurisdiction the offence was committed.

Stealing.

(3) The offence of stealing anything may be inquired into or tried by any court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

132. (1) (a) When it is uncertain in which of several local areas an offence was committed; or
- (b) where an offence is committed partly in one local area and partly in another; or
- (c) where an offence is a continuing one and continues to be committed in more local areas than one; or
- (d) where an offence consists of several acts done in different local areas; or
- (e) where in the course of the same transaction different offences are committed in different local areas.

Place of inquiry or trial in various cases.

such offence or offences may be inquired into or tried by a court having jurisdiction over any one of such local areas.

(2) An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a court through or into the local limits of whose jurisdiction the offender or the person against whom or the thing in respect of which the offence was committed passed in the course of that journey or voyage.

Offences committed on a journey.

(3) All offences against the provisions of any law for the time being in force relating to railways, telecommunications, the post office, or arms and ammunition may be inquired into or tried by any court, whether the offence is stated to have been committed within the local limits of the jurisdiction of such court or not, provided that the offender is found within such local jurisdiction.

Offences against provisions of any law relating to railways, telecommunications, post office, arms and ammunition.

133. Whenever any doubt is entertained by a Magistrate as to the Magistrate's Court by which any offence should be inquired into, such Magistrate may embody the ascertained facts in the form of a case and transmit the same to the Attorney-General for his opinion, and the Attorney-General shall thereupon decide in which court the offence shall be inquired into and such court shall thereupon have jurisdiction to inquire into such offence.

Attorney-General to decide, in case of doubt court where inquiry shall take place.

134. Any sentence or order of any criminal court in the trial of an offence shall not be liable to be set aside merely on the ground that the inquiry into the commission of the offence to which the sentence or order relates was made by a Magistrate's Court not empowered under this Chapter so to do.

Sentence not to be set aside because inquiry held by wrong Magistrate's Court.

B. — CONDITIONS NECESSARY FOR INITIATING PROCEEDINGS.

The conditions necessary for the initiation or prosecutions for certain offences.

135. (1) Any court shall not take cognizance of—

- (a) any offence punishable under sections 170 to 185 (both inclusive) of the Penal Code except with the previous sanction of the Attorney-General or on the complaint of the public servant concerned or of some public servant to whom he is subordinate;
- (b) any offence punishable under sections 158, 159, 160, 161, 210, 211 and 212 of the Penal Code except with the previous sanction of the Attorney-General;
- (c) any offence punishable under sections 190, 191, 192, 193, 196, 197, 202, 203, 204, 205, 206, 207 and 223 of the Penal Code when such offence is committed in or in relation to any proceeding in any court except with the previous sanction of the Attorney-General or on the complaint of such court;
- (d) any offence described in section 452 or punishable under sections 459, 463 and 464 of the Penal Code when such offence has been committed by a party to any proceeding in any court in respect of a document given in evidence in such proceeding except with the previous sanction of the Attorney-General or on the complaint of such court;
- (e) any offence punishable under Chapter VI of the Penal Code or punishable under section 290A or section 291B of the same Code unless upon complaint made by the Attorney-General or by some other person with the previous sanction of the Attorney-General;
- (f) any offence falling under Chapter XIX of the Penal Code unless upon complaint made with the previous sanction of the Attorney-General by some person aggrieved by such offence or by some other person with the like sanction;
- (g) any offence punishable under section 291A of the Penal Code, unless upon complaint made with the previous sanction of the Attorney-General by some person aggrieved by such offence or by some other person with the like sanction.

(2) The complaint of a court shall be in writing under the hand of the Registrar of the court.

(3) Where complaint is made by a court such court may cause the accused to be arrested and sent in custody before the Magistrate's Court having jurisdiction.

(4) When sanction is given in respect of any offence referred to in this section the court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts, but such sanction shall not remain in force for more than six months from the date on which it was given.

CHAPTER XIV

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES' COURTS

136. (1) Proceedings in a Magistrate's Court shall be instituted in one of the following ways :—

(a) on a complaint being made orally or in writing to a Magistrate of such court that an offence has been committed which such court has jurisdiction either to inquire into or try :

Provided that such a complaint if in writing shall be drawn and countersigned by a pleader and signed by the complainant ; or

(b) on a written report to the like effect being made to a Magistrate of such court by an inquirer appointed under Chapter XI or by a peace officer or a public servant or a servant of a Municipal Council or of an Urban Council or of a Town Council ; or

(c) upon the knowledge or suspicion of a Magistrate of such court to the like effect ;

Provided that when proceedings are instituted under this paragraph the accused or when there are several persons accused any one of them, shall be entitled to require that the case shall not be tried by the Magistrate upon whose knowledge or suspicion the proceedings were instituted, but shall either be tried by another Magistrate or committed for trial ; or

(d) on any person being brought before a Magistrate of such court in custody without process, accused of having committed an offence which such court has jurisdiction either to inquire into or try ; or

Proceedings
in
Magistrate's
Court how
instituted.

(e) upon a warrant under the hand of the Attorney-General requiring a Magistrate of such court to hold an inquiry in respect of an offence which such court has jurisdiction to inquire into; or

(f) on a written complaint made by a court under section 135.

(2) The written report under paragraph (b), the warrant of the Attorney-General under paragraph (e), and the written complaint under paragraph (f) of subsection (1) may be forwarded by post or by messenger to the Magistrate's Court or delivered by hand to a Magistrate of such court and shall form part of the proceedings.

(3) Except as herein provided any written complaint shall not be entertained by a Magistrate.

Medical examination of complainant and accused in case of rape &c.

137. In cases where the offence complained of is one of rape, carnal intercourse with a young girl, unnatural offence, or hurt of a serious nature or hurt whether serious or not alleged to have been caused by an instrument for stabbing or cutting, the Magistrate shall cause the person who is alleged to have been the subject of such rape, carnal intercourse, unnatural offence, or hurt, and the person accused of such rape, carnal intercourse or unnatural offence to be forthwith examined by a Government medical officer if he has not already been so examined.

Procedure in certain cases where accused is unknown.

138. (1) Where the offence alleged in any proceedings instituted under section 136 (1) (a) or section 136 (1) (b) is not one triable summarily by him, the Magistrate may, although no person by name is accused of having committed such offence, examine on oath the complainant or informant and any other person who may appear to the Magistrate to be able to speak to the facts of the case. Such examination may if the Magistrate thinks fit be held in private.

(2) Every examination held by the Magistrate under subsection (1) shall be reduced into writing and after being read over and if need be interpreted to the person examined shall be signed by him and also by the Magistrate and dated.

(3) If, after such examination, there is in the opinion of the Magistrate sufficient ground for proceeding against any person, he shall issue process against such person in the manner provided by section 139.

139. (1) Where proceedings have been instituted under paragraph (a) or paragraph (b) or paragraph (c) of section 136 (1) and the Magistrate is of opinion that there is sufficient ground for proceeding against some person who is not in custody—

Issue of process.

(a) if the case appears to be one in which according to the fourth column of the First Schedule a summons should issue in the first instance, he shall, subject to the provisions of section 63, issue a summons for the attendance of such person ;

(b) if the case appears to be one in which according to that column a warrant should issue in the first instance, he shall issue a warrant for causing such person to be brought or to appear before the court at a certain time ;

Provided that—

(i) the Magistrate may in any case, if he thinks fit, issue a summons in the first instance instead of a warrant ;

(ii) in any case under paragraph (a) or paragraph (b) of section 136 (1), the Magistrate shall, before issuing a warrant, and may, before issuing a summons, examine on oath the complainant or some material witness or witnesses ; and

(iii) in any case under paragraph (c) of section 136 (1), the Magistrate shall, before issuing process, record a brief statement of the facts which constitute his means of knowledge or of the grounds of his suspicion, as the case may be.

(2) Where proceedings have been instituted under paragraph (d) of section 136 (1), the Magistrate shall forthwith examine on oath or affirmation the person who has brought the accused before the court and any other person who may be present in court able to speak to the facts of the case ;

Provided that such examination shall not be necessary where the Magistrate has before him a report of the facts of the case or a complaint in writing has been filed.

(3) Where proceedings have been instituted under paragraph (e) or paragraph (f) of section 136 (1), the Magistrate shall issue a summons for the attendance of the person named in the warrant or complaint, or a warrant for causing such person to be brought or to appear before the court at a certain time, according as the fourth column of the First Schedule provides that the case is one in which a summons or a warrant should issue in the first instance.

to read r
of the
statement
bl d r
v taly
log: n

Contents of
summons
or
warrant.

140. Every summons or warrant issued under section 139 shall contain a statement of the particulars of the offence charged and in the case of a summons shall require the accused to appear at a time and place therein specified to answer the charge therein set forth.

Examination
under section
139 to be
recorded.

141. Every examination held by the Magistrate under section 139 shall be recorded in the manner provided in section 138 (2).

Such examination may if the Magistrate thinks fit be held in private.

Procedure
to be
adopted
when case
proceeds.

142. (1) Where the offence or any one of them where there is more than one, falls within the list of offences set out in the Second Schedule to the Judicature Act, No. 2 of 1978, the Magistrate shall follow the procedure laid down in Chapter XV.

(2) Where the offence appears to be one triable summarily in a Magistrate's Court the Magistrate shall follow the procedure laid down in Chapter XVII:

Provided that if the Magistrate is of opinion that the offence cannot be adequately punished by a Magistrate's Court he shall forthwith stop further proceedings and forward the record of the case to the Attorney-General, and thereafter abide the instructions of the Attorney-General:

Provided further that in any case where any of the offences do not fall within those set out in the Second Schedule to the Judicature Act, No. 2 of 1978, the Attorney-General may in accordance with section 145 (b) direct the Magistrate to follow the procedure laid down in Chapter XV and the Magistrate shall then follow such procedure.

In case of
homicide
Magistrate
to hold
inquiry
on spot.

143. If in a proceeding instituted under section 136 the case appears to be one of culpable homicide the Magistrate shall, unless for reasons to be recorded by him he thinks it inexpedient, go to the spot where such offence appears to have been committed and if the accused be present before him shall proceed to hold such part of the inquiry directed by Chapter XV as may be necessary, and if the accused be not present shall hold an examination of such persons as may seem to him to be able to give material evidence.

Such examination shall be recorded in the manner provided in section 138 (2).

144. Whenever a Magistrate issues a summons he may in his discretion dispense with the personal attendance of the accused and permit him to appear by a pleader :

In summons case personal attendance of the accused may be dispensed with.

Provided always that the Magistrate may in his discretion at any stage of the proceedings direct the personal attendance of the accused and enforce his attendance in manner herein before provided.

CHAPTER XV

OF THE INQUIRY INTO CASES WHICH APPEAR NOT TO BE TRIABLE SUMMARILY BY MAGISTRATE'S COURT BUT TRIABLE BY THE HIGH COURT.

145. When the accused appears or is brought before the Magistrate's Court, the Magistrate shall in a case—

Preliminary inquiry.

(a) where the offence or any one of them where there is more than one, falls within the list of offences set out in the Second Schedule to the Judicature Act, No. 2 of 1978 ; or

(b) where the Attorney-General being of opinion that evidence recorded at a preliminary inquiry will be necessary for preparing an indictment, within three months of the date of the commission of the offence so directs,

hold a preliminary inquiry according to the provisions hereinafter mentioned.

146. A Magistrate conducting a preliminary inquiry shall at the commencement of such inquiry read over to the accused the charge or charges in respect of which the inquiry is being held, but upon such reading over the accused shall not be required to make any reply thereto ; if any such reply is made, it shall not be recorded by the Magistrate ; nor shall any such reply be admissible in evidence against the accused.

Accused to be informed of charge.

147. The officer in charge of the police station where the relevant Information Book is kept shall at the commencement of the inquiry furnish to the Magistrate two certified copies of the notes of investigation and of all statements recorded in the course of the investigation.

Information Book. Entries to be tendered.

Depositions.

148. (1) The Magistrate shall then take, in the presence of the accused and in the manner hereinafter provided, the statements on oath or affirmation of those who know the facts and circumstances of the case, and put them in writing (called the depositions):

Provided that the Magistrate shall not except where the Attorney-General otherwise directs summon and record the evidence of any expert witness but shall only cause such witness's report to be produced and filed of record.

(2) Subject to the proviso to subsection (1) the accused may put questions to each witness produced against him and the answer of the witness thereto shall be part of his deposition.

(3) If the accused is not represented by an attorney-at-law the Magistrate shall, at the close of the examination of each witness for the prosecution, ask the accused whether he wishes to put any questions to the witness.

(4) (a) Where the accused—

(i) is absconding or has left the island; or

(ii) is unable to attend or remain in court by reason of illness and either has consented to the commencement or continuance of the inquiry in his absence or such inquiry may commence or continue without any prejudice to him; or

(iii) by reason of his conduct in court is obstructing or impeding the progress of the inquiry,

the Magistrate may, if satisfied of these facts, commence and proceed or continue with the inquiry in the absence of the accused.

(b) An attorney-at-law may appear for such absent accused.

(c) The inquiry shall proceed as far as is practicable in accordance with the provisions of this Chapter and section 416 shall apply to the depositions recorded where there is a trial on indictment in the High Court whether the accused is present in the High Court or not.

Depositions
where the
accused is
absconding
or abroad.

149. (1) Any variance between facts stated in the charge read over to the accused under section 146 and the evidence adduced in support thereof as to the time or place at which the offence or act is alleged to have been committed shall not be deemed material if it be proved, in the case of the time, that the charge was in fact laid within the time limited by law for laying the same and, in the case of the place, that the jurisdiction of the court is not ousted hereby:

Variance between charge and evidence.

(2) Any variance in any other respect between the facts stated in the charge and the evidence adduced in support thereof shall not be material :

Provided that the accused shall not be convicted of any offence other than that with which he has been charged unless such other offence is one of which he may be lawfully convicted under the provisions of this Code upon the trial of the offence with which he is charged.

convicted of offence charged

(3) Where any variance as is mentioned in this section appears to the Magistrate to be such that the accused has been thereby deceived or misled, the Magistrate may upon such terms as he shall think fit adjourn the inquiry to some further day.

(4) Upon any such variance appearing the Magistrate may make such amendment of the charge as he deems fit and may permit any witness to be recalled and further questioned upon any matters relevant to the variance or amended charge.

150. After the examination of the witnesses called on behalf of the prosecution and provided that the Magistrate does not consider that the case should be dealt with in accordance with the provisions of section 153, the Magistrate shall read the charge to the accused and explain the nature thereof in ordinary language and inform him that he has the right to call witnesses and, if he so desires, to give evidence on his own behalf.

Charges to be read to accused after close of prosecution case.

151. (1) The Magistrate shall then address to the accused the following words or words to the like effect :—

Provisions as to taking statement of accused.

"Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and put in evidence at your trial".

(2) Before the accused makes any statement in answer to the charge, the Magistrate shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may be held out to him to induce him to make any admission or confession of his guilt, but that whatsoever he then says will be given in evidence at his trial, notwithstanding the promise or threat.

(3) Any statement the accused makes in answer to the charge shall be recorded in the manner provided by section 277.

Evidence
for the
defence.

152. (1) Immediately after complying with the requirements of section 151 relating to the statement of the accused, and whether the accused has or has not made a statement, the Magistrate shall ask the accused whether he desires to give evidence on his own behalf and whether he desires to call witnesses.

(2) If the accused in answer to the question states that he wishes to give evidence but not to call witnesses, the Magistrate shall proceed to take forthwith the evidence of the accused, and after the conclusion of the evidence of the accused, his attorney-at-law (if the accused is represented) shall be heard on his behalf, if he so desires.

(3) If the accused in answer to the question states that he desires to give evidence on his own behalf and to call witnesses, or to call witnesses only, the Magistrate shall proceed to take either forthwith, or, if a speech is to be made by an attorney-at-law on behalf of the accused, after the conclusion of the speech, the evidence of the accused, if he desires to give evidence himself, and of any witness called by him who knows anything relating to the facts and circumstances of the case or anything tending to prove the innocence of the accused.

(4) If the accused states that he has witnesses to call, but that they are not present in court, and the Magistrate is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused, the Magistrate may adjourn the inquiry and issue process or take other steps to compel the attendance of such witnesses.

(5) Evidence given by the accused or any such witness as aforesaid shall be taken down in writing and the provisions of section 148 shall apply in the case of witnesses for the defence as they apply in the case of witnesses for the prosecution, except that the Magistrate shall not bind over to attend the trial any witness who is a witness merely to the character of the accused.

153. (1) If the Magistrate considers that the evidence against the accused is not sufficient to put him on his trial, the Magistrate shall forthwith for reasons to be recorded by him order him to be discharged as to the particular charge under inquiry ; but such discharge shall not be a bar to any subsequent charge in respect of the same facts : **Discharge.**

Provided that nothing contained in this section shall prevent the Magistrate from either forthwith or after such adjournment of the inquiry as may seem expedient in the interests of justice, proceeding to investigate any other charge upon which the accused may have been summoned or otherwise brought before him, or which, in the course of the charge so dismissed as aforesaid, it may appear that the accused has committed.

(2) Anything in this section shall not be deemed to prevent the Magistrate from discharging the accused at any stage of the case if for reasons (to be recorded by him) he considers the complaint to be groundless.

154. If the Magistrate considers the evidence sufficient to put the accused on his trial, the Magistrate shall commit him for trial before the High Court. **Commitment for trial**

155. (1) The Magistrate shall at the time of committing the accused for trial require the accused to state orally there and then the names of persons (if any) whom he wishes to be required to give evidence at his trial, dis- **Accused's witnesses.**

tinguishing between those whom he proposes to call to speak to facts and those who are merely to speak to character.

(2) The Magistrate shall prepare a list of such of the witnesses named by the accused under subsection (1) as have not already given evidence before him and shall direct the Fiscal to issue a notice on each such witness requiring him to appear before the court of trial on the date specified in the notice :

Provide, however, that the Magistrate may exclude from such list the name of any witness if he is of opinion that the evidence of such witness is not material.

(3) Where any witness on whom a notice under subsection (2) has been served fails to appear in the court of trial as directed by such notice, that notice shall, for the purpose of the application of sections 63 and 64, be deemed to be a summons which the court of trial is empowered to issue and the provisions of those sections shall apply accordingly.

(4) Service of any notice under this section shall be effected in the manner provided for the service of summons in sections 45 and 46 and the provisions of section 49 shall apply accordingly for the purpose of proving such service :

Provided that if service cannot be effected in such manner by the exercise of due diligence, the notice shall be affixed to some conspicuous part of the house or homestead in which the witness ordinarily resides, and in such case the notice shall be deemed to have been duly served.

**Material
witnesses
to be bound
over to
appear.**

156. (1) When the Magistrate commits the accused for trial he shall require every material witnesses for the prosecution or defence who has appeared before him and given evidence and who has not already been bound over, to execute a bond with or without sureties for his appearance to give evidence at the trial and, if required, at any further

examination concerning the charge against the accused which may be held by the direction of the Attorney-General; and for the like purpose it shall be lawful for any Magistrate who examines any witness on commission under the provisions hereinafter contained to require such witness so examined to execute a bond with or without sureties as such Magistrate may determine.

(2) The Magistrate may at any stage of the inquiry require any witness to execute such bond as in the last subsection mentioned for appearance at any further stage of the proceedings either in that court or in the High Court, in case the accused be committed for trial. It shall not be necessary to specify the sessions of the High Court in the bond, but the obligor shall be bound on receiving reasonable notice to attend at the trial in whatever sessions of the High Court the accused may be tried.

(3) If a witness refuses or neglects to execute such bond the Magistrate may commit him to prison until such bond is duly executed or until the trial, when he shall be sent in custody to the court of trial.

(4) The Magistrate shall endorse on the warrant of committal the names of all persons who have been bound over under this section or who having refused to be bound over have been committed to prison.

(5) Every person who executes such bond shall give to the Magistrate an address at which all notices respecting the further proceedings in the case may be left for him, and any notice left at such address for him shall (until the contrary be proved) be deemed to have been received by him.

157. The Magistrate shall if the accused is committed for trial record whether the accused is on bail or in custody and certify under his hand the record of the inquiry.

Magistrate
to certify
record.

Accused
entitled to
copy of
evidence
and state-
ments to
the police.

158. When the accused has been committed for trial he shall, if he demands it at a reasonable time before the trial, be furnished on payment therefor at the rate of twenty-five cents for a hundred words—

(a) with a certified copy of the record or any part thereof by the officer in charge of the record; and

(b) with a certified copy of the statements to the police of the witnesses who have testified before the Magistrate and of the statements (if any) to the police of the accused, by the officer in charge of the police station where the relevant books are kept.

Record to be
forwarded
to court
of trial,
and
certified
copy of
record to
Attorney-
General

159. (1) When the Magistrate commits the accused for trial he shall, subject to the provisions of this Code regarding the taking of bail by warrant addressed to the Superintendent of any prison, commit the accused to the custody of the said superintendent until and during the trial.

(2) The Magistrate shall forthwith transmit—

(a) to the High Court—

(i) the record of the inquiry together with all documents and things produced in evidence; and

(ii) a copy certified under his hand of such record and of such documents; and

(iii) one of the certified copies of the notes of investigation and of statements furnished by the officer in charge of the police station;

(b) to the Attorney-General—

(i) a copy certified under his hand of the record of inquiry and of all the documents produced in evidence together with as many of such certified copies as there are accused; and

(ii) one of the certified copies of the notes of investigation and of statements furnished by the officer in-charge of the police station,

(3) The provisions of section 264 shall apply to every warrant issued under this section.

160. (1) If after the receipt by him of the certified copy of the record of an inquiry, the Attorney-General is of opinion that the case is one which should be tried upon indictment before the High Court, an indictment shall be drawn up and when signed in accordance with the provisions of section 162 (3) shall be forwarded to and filed in the High Court.

Presentation
and ser-
vice of
indictment.

(2) The fact that the indictment has been so signed, forwarded, and filed shall be equivalent to a statement that all conditions required by law to constitute the offence charged and to give such court jurisdiction have been fulfilled in the particular case.

(3) The Attorney-General may, subject to the provisions of this Code relating to the joinder of charges, substitute or include in the indictment any charge in respect of any offence which is disclosed by the evidence taken by the Magistrate, notwithstanding that such charge was not read to the accused by the Magistrate.

161. Subject to the provisions of this Code and any other written law in every case where at least one of the offences falls within the list of offences set out in the Second Schedule to the Judicature Act, No. 2 of 1978, or in any case where the Attorney-General having regard to the nature and circumstances of the offence determines that the trial should be held in the High Court by a jury, trial shall be on indictment in the High Court by a jury. In every other case and whether there was a preliminary inquiry under this Chapter or not, trial shall be on indictment in the High Court without a jury.

When trial
shall be
by jury
and when
not.

162. (1) Every indictment for trial in the High Court whether with or without a jury shall contain a list of witnesses whom the prosecution intends to call and another list of documents and things intended to be produced at the trial which documents and things shall be called "productions".

Contents
of
indictment.

But anything in this subsection shall not be deemed or construed to debar the prosecution after notice to the accused, from calling any witness or producing any document or thing not specified in the indictment.

(2) To every indictment shall be attached the following documents:—

- (a) where there was a preliminary inquiry under this Chapter a certified copy of the record of inquiry and of the documents and of the inquest proceedings if there had been an inquest;
- (b) whether there was a preliminary inquiry under this Chapter or not, copies of—
 - (i) the statements to the police of the accused; and
 - (ii) every statement to the police of all the witnesses listed in the indictment;
- (c) copies of all reports and sketches listed in the indictment;
- (d) copies of the notes of any identification parades that may have been held during the investigation of the case;
- (e) copies of any statements made to the Magistrate under section 127 by—
 - (i) the accused; and
 - (ii) any witness listed in the indictment; and
- (f) copies of such portion of the notes, containing the observations of the scene of offence, made during the investigation of the offence by a police officer.

(3) The indictment shall be in the prescribed form and shall be brought in the name of the Attorney-General and shall be signed by the Attorney-General or the Solicitor-General or a State Counsel.

(4) The proceedings shall not abate or determine by reason of the death or removal from office of the Attorney-General.

163. Every inquiry held under this Chapter shall be concluded within one month of the commencement of the proceedings unless the Magistrate, of reasons to be recorded by him, finds it necessary to prolong the inquiry beyond the period of one month.

**Inquiry
to be
concluded
in a
month.**

CHAPTER XVI

OF THE CHARGE

164. (1) Every charge under this Code shall state the offence with which the accused is charged.

Charge to
state
offence.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as will give the accused notice of the matter with which he is charged.

(4) The law and section of the law under which the offence said to have been committed is punishable shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall when it is preferred, whether at the inquiry preliminary to committal for trial or at the trial, be read to the accused in a language which he understands.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 293 and 294 of the Penal Code; that it did not fall within any of the general exceptions of the same Code and that it did not fall within any of the five exceptions to section 294, or that if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

(b) A is charged under section 317 of the Penal Code with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 326 of the Penal Code and that the general exception did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, criminal intimidation or using a false property-mark. The charge may state that A committed murder or cheating or theft or extortion or criminal intimidation, or that he used a false property-mark without reference to the definitions of those crimes contained in the Penal Code.

(d) A is charged under section 182 of the Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in these words.

Particulars
as to time,
place and
person.

165. (1) The charge shall contain such particulars as to the time and place of the alleged offence and as to the person (if any) against whom and as to the thing (if any) in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged and to show that the offence is not prescribed.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of movable property, it shall be sufficient to specify the gross sum or, as the case may be, the gross quantity in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 174 :

Provided that the time included between the first and last of such dates shall not exceed one year.

When
manner of
committing
offence
must be
stated.

(3) When the nature of the case is such that the particulars mentioned in section 164 and the preceding subsections of this section do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

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

What
sense
to be
attached
to words
used in.

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

166. Any error in stating either the offence or the particulars required to be stated in the charge and any omission to state the offence or these particulars shall not be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

Effect of errors.

Illustrations

(a) A is charged under section 237 of the Penal Code with "having been in possession of counterfeit coin having known at the time when he became possessed thereof that such coin was counterfeit", the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission the error shall not be regarded as material.

(b) A is charged with cheating B and the manner in which he cheated B is not set out in the charge or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B and A had no means of knowing to which of them the charge referred and offered no defence. The court may infer from such facts that the omission to set out the manner of the cheating was in this case material.

167. (1) Any court may alter any indictment or charge at any time before judgment is pronounced or, in the case of trials before the High Court by a jury, before the verdict of the jury is returned.

Court may alter charge.

(2) Every such alteration shall be read and explained to the accused.

(3) The substitution of one charge for another in an indictment or the addition of a new charge to an indictment and in a Magistrate's Court the substitution of one charge for another or the addition of a new charge shall be deemed to be an alteration of such indictment or charge within the meaning of this section.

168. If the alteration made under section 167 is such that proceeding immediately with the trial 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 in its discretion after such alteration has been made, proceed with the trial as if the altered indictment or charge had been the original indictment or charge.

When trial may proceed on altered charge immediately.

When new trial may be directed or trial adjourned.

169. If the alteration made under section 167 is such that proceeding immediately with the trial is likely in the opinion of the court to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.

Stay of proceedings if prosecution of offence in altered charge requires previous sanction.

170. If the indictment or charge as altered under section 167 alleges an offence for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained unless sanction has been already obtained for a prosecution on the same facts as those on which the altered indictment or charge is founded.

Recall of witnesses when altered.

171. Whenever an indictment or charge is altered by the court after the commencement of the trial the prosecutor and the accused shall be allowed to recall or re-summon and examine with reference to such alteration any witnesses who may have been examined.

Effect of material error.

172. (1) If the Supreme Court or the Court of Appeal in the exercise of its powers of appeal or revision is of opinion that any person convicted of an offence was misled in his defence by an error in the indictment or charge, it shall direct a new trial to be had upon a charge or indictment framed in whatever manner it thinks fit or make such other order as the justice of the case may require.

(2) If such Court is of opinion that the facts of the case are such that any valid charge cannot be preferred against the accused in respect of the facts proved or where the circumstances so warrant, it shall quash the conviction.

Illustration

A is convicted of an offence under section 193 of the Penal Code upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge it shall quash the conviction.

JOINDER OF CHARGES.

Separate charge for separate offence.

173. For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately; except in the case mentioned in sections 174, 175, 176 and 180 which said sections may be applied either severally or in combination.

Illustration

A is accused of a theft on one occasion and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

174. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences he may be charged with and tried at one trial for any number of them not exceeding three, and in trials before the High Court such charges may be included in one and the same indictment.

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

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Penal Code or of any special or local law.

175. (1) If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person he may be charged with and tried at one trial for every such offence, and in trials before the High Court such charges may be included in one and the same indictment.

Trial for more than one offence.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished the person accused of them may be charged with and tried at one trial for each of such offences, and in trials before the High Court such charges may be included in one and the same indictment.

Offence falling within two definitions.

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined and for any offence constituted by any one or more of such acts and in trials before the High Court such charges may be included in one and the same indictment.

Acts constituting one offence but constituting another offence when combined.

(4) Anything contained in this section shall not affect section 67 of the Penal Code.

Illustrations

To subsection (1) :

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with and tried for offences under sections 220 and 324 of the Penal Code.

- (b) A has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 455 of the Penal Code. A may be separately charged with and convicted of the possession of each seal under section 461 of the Penal Code.
- (c) A with intent to cause injury to B institutes a criminal proceeding against him knowing that there is no just or lawful ground for such proceeding and also falsely accuses B of having committed an offence knowing that there is no just or lawful ground for such accusation. A may be separately charged with and convicted of two offences under section 208 of the Penal Code.
- (d) A with intent to cause injury to B falsely accuses him of having committed an offence knowing that there is no just or lawful ground for such accusation. On the trial A gives false evidence against B intending thereby to cause B to be convicted of a capital offence. A may be separately charged with and convicted of offence under section 208 and 191 of the Penal Code.
- (e) A with six others commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with and convicted of offences under sections 144, 316 and 149 of the Penal Code.
- (f) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with and convicted of each of the three offences under section 486 of the Penal Code.

To subsection (2) :

- (g) A wrongfully strikes B with a cane, A may be separately charged with and convicted of offences under sections 343 and 314 of the Penal Code,
- (h) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with and convicted of offences under section 394 and 396 of the Penal Code.
- (i) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with and convicted of offences under sections 308 and 297 of the Penal Code.
- (j) A dishonestly uses a forged document as genuine evidence in order to convict B, a public servant, of an offence under section 163 of the Penal Code. A may be separately charged with and convicted of offences under sections 450 (read with 455) and 193 of the same Code.

To subsection (3) :

- (k) A commits robbery on B and in doing so voluntarily causes hurt to him. A may be separately charged with and convicted of offences under sections 314, 380 and 382 of the Penal Code.

The separate charges referred to in illustrations (a) to (k) respectively may be tried at one trial and included in one and the same indictment.

176. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with all or any one or more of such offences and any number of such charges may be tried at one trial and in a trial before the High Court may be included in one and the same indictment; or may be charged with having committed one of the said offences without specifying which one.

Where it is doubtful what offence has been committed.

Illustration

A is accused of an act which may amount to theft or receiving stolen property or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust, and cheating, or he may be charged with having committed one of the following offences, to wit, theft, receiving stolen property, criminal breach of trust, and cheating.

177. If in the case mentioned in section 176 the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

When a person charged with one offence may be convicted of a different offence.

Illustration

A is charged with theft. It appears that he committed the offence of criminal breach of trust or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

178. (1) When a person is charged with an offence consisting of several particulars a combination of some only of which constitutes a complete minor offence and such combination is proved but the remaining particulars are not proved he may be convicted of the minor offence though he was not charged with such offence.

When offence proved included in offence charged.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence he may be convicted of the minor offence although he was not charged with it and although jurisdiction to try such minor offence is exclusively vested in some other court.

(3) Anything in this section shall not be deemed to authorize a conviction for any offence referred to in section 135 when a complaint has not been made as required by that section.

Illustrations

- (a) A is charged under section 390 of the Penal Code with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 389 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 389.
- (b) A is charged under section 316 of the Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 326 of that Code.

Conviction of an attempt to commit an offence though attempt is not separately charged.

179. When a person is charged with an offence and it is proved that he attempted to commit that offence and that in such attempt he did an act towards the commission of that offence he may be convicted of an attempt to commit that offence although he was not charged with such attempt :

Provided that anything in this section shall not be deemed to authorize the conviction of any person for an attempt to commit an offence unless an attempt to commit that offence is made punishable by any written law for the time being in force in Sri Lanka.

All persons concerned in committing an offence may be charged together.

180. When more persons than one are accused of jointly committing the same offence or of different offences committed in the same transaction or when one person is accused of committing any offence and another or abetment of or attempt to commit such offence, they may be charged and tried together or separately as the court thinks fit ; and the provisions contained in the former part of this Chapter shall apply to all such charges.

Illustrations

- (a) A and B are accused of the same murder. A and B may be indicted and tried together for the murder.
- (b) A and B are accused of a robbery in the course of which A commits a murder with which B had nothing to do. A and B may be tried together on an indictment charging both of them with the robbery and A alone with the murder.
- (c) A and B are both charged with a theft and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge charging both with one theft and B alone with the other two thefts.
- (d) A and B are accused of being members of opposing factions in a riot. They should be indicted and tried separately.
- (e) A and B are accused of giving false evidence in the same proceeding. They should be indicted and tried separately.

When conviction on one charge remaining charges may be withdrawn.

181. (1) When more charges than one are made against the same person and when a conviction has been had on one or more of them 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.

(2) Such withdrawal shall have the effect of an acquittal on such charge or charges unless the conviction be set aside, in which case the said court (subject to the order of the court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

CHAPTER XVII

THE TRIAL OF CASES WHERE A MAGISTRATE'S COURT
HAS POWER TO TRY SUMMARILY

182. (1) Where the accused is brought or appears before the court the Magistrate shall if there is sufficient ground for proceeding against the accused, frame a charge against the accused.

Particulars
of case to
be stated
to accused.

(2) The Magistrate shall read such charge to the accused and ask him if he has any cause to show why he should not be convicted.

183. (1) If the accused upon being asked if he has any cause to show why he should not be convicted makes a statement which amounts to an unqualified admission that he is guilty of the offence of which he is accused, his statement shall be recorded as nearly as possible in the words used by him; and the Magistrate shall record a verdict of guilty and pass sentence upon him according to law and shall record such sentence:

Admission
of offence
by accused.

Provided that the accused may with the leave of the Magistrate withdraw his plea of guilt at any time before sentence is passed upon him, and in that event the Magistrate shall proceed to trial as if a conviction has not been entered.

(2) If the accused does not make a statement or makes a statement which does not amount to an unqualified admission of guilt the Magistrate shall ask him if he is ready for trial and—

(a) if the accused replies that he is ready for trial shall proceed to try the case in manner hereinafter provided, but

(b) if the accused replies that he is not ready for trial by reason of the absence of witnesses or otherwise the Magistrate shall, subject to the provisions of subsection (3) of section 263, either postpone the trial to a day to be then fixed or proceed forthwith to try the case in manner hereinafter provided.

But anything herein contained shall not prevent the Magistrate from taking in manner hereinafter provided the evidence of the prosecution and of such of the witnesses for the defence as may be present, and then, subject to the pro-

visions of subsection (3) of section 263 for reasons to be recorded by him in writing adjourning the trial for a day to be fixed by him.

Procedure
on trial.

184. (1) When the Magistrate proceeds to try the accused he shall take all such evidence as may be produced for the prosecution or defence respectively.

(2) The accused shall be permitted to cross-examine all witnesses called for the prosecution and called or recalled by the Magistrate.

(3) The complainant and accused or their pleaders shall be entitled to open their respective cases, but the complainant or his pleader shall not be entitled to make any observations in reply upon the evidence given by or on behalf of the accused.

Verdict.

185. If the Magistrate after taking the evidence for the prosecution and defence and such further evidence (if any) as he may of his own motion cause to be produced finds the accused not guilty, he shall forthwith record a verdict of acquittal. If he finds the accused guilty he shall forthwith record a verdict of guilty and pass sentence upon him according to law and shall record such sentence.

Power of
Magistrate
to discharge
accused at
any time.

186. Anything herein before contained shall not be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, but he shall record his reasons for doing so:

Provided that, if the Magistrate is satisfied, for reasons to be recorded by him, that further proceedings in the case will not result in the conviction of the accused, he shall acquit the accused.

What to be
done when
different
offence
disclosed
in course
of proceed-
ings.

187. (1) If from the facts admitted or proved it appears that the accused has committed an offence within the jurisdiction of the Magistrate to try other than that specified in the charge, the Magistrate may convict the accused of such offence, but before he so convicts he shall frame a charge and shall read and explain it to the accused, and such of the provisions of Chapter XVI as relate to altered charges shall apply to the charge framed under this section.

(2) If from the facts admitted or proved it appears that the accused has committed an offence—

(a) falling within the list of offences set out in the Second Schedule to the Judicature Act, No. 2 of 1978, the

Magistrate shall not convict but shall stay proceedings under this Chapter and commence the proceedings afresh under Chapter XV ; or

(b) not falling within the list of offences in that Schedule but still not triable summarily by him, the Magistrate shall not convict but shall stay proceedings and report the case to the Attorney-General and then abide his instructions.

188. (1) If the summons has been issued on a complaint under section 136 (1) (a) upon the day and hour appointed for the appearance of the accused or at any time to which the hearing may be adjourned the complainant does not appear the Magistrate shall notwithstanding anything herein before contained acquit the accused unless for some reason he thinks proper to adjourn the hearing of the case to some other hour or day, and may in addition make an order for payment by the complainant of State costs as hereinafter provided :

Accused may be acquitted in the absence of complainant.

Provided that if the complainant appears in reasonable time and satisfies the Magistrate that his absence was due to sickness, accident or some other cause over which he had no control, then the Magistrate shall cancel any order made under this subsection.

(2) If the summons has been issued on a complaint under section 136 (1) (b) or (c) as the case may be, and on the day fixed for trial the prosecution is not ready the court may discharge the accused unless for some reason the court thinks proper to adjourn the hearing of the case to some other hour or day.

(3) If the order of discharge referred to in subsection (2) has been made for the second time in respect of the same offence, such order of discharge shall amount to an acquittal.

189. If a complainant at any time before judgment is given in any case under this Chapter satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw the case the Magistrate may permit him to withdraw the same and shall thereupon acquit the accused, but he shall record his reasons for doing so :

Withdrawal of charge by complainant.

Provided, however, that anything herein contained shall not be taken to extend the powers of a Magistrate to allow the compounding of offences under the provisions of section 266.

Accused
may be
discharged by
Magistrate
with sanction
of Attorney-
General.

By whom
prosecution
under this
Chapter
may be
conducted.

Trial may
proceed in
absence
of accused.

190. In any case tried under this Chapter otherwise than upon a complaint under section 136 (1), paragraphs (a), (c) and (d), the Magistrate may with the previous sanction of the Attorney-General, for reasons to be recorded by the Magistrate, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon discharge the accused.

191. (1) Subject to subsection (2) the Attorney-General, the Solicitor-General, a State Counsel or a pleader generally or specially authorized by the Attorney-General shall be entitled to appear and conduct the prosecution in any case tried under this Chapter, but in the absence of the Attorney-General, the Solicitor-General, a State Counsel and any pleader as aforesaid the complainant or any officer of any Government Department or any officer of any Municipality, Urban Council or Town Council may appear in person or by pleader to prosecute in any case in which such complainant or Government Department or Municipality or Urban Council or Town Council is interested:

Provided that in the absence of the Attorney-General, the Solicitor-General, a State Counsel or a pleader generally or specially authorized by the Attorney-General the Magistrate may, where an attorney-at-law does not appear for the complainant, permit any attorney-at-law to appear and conduct the prosecution on behalf of the person against whom or in respect of whom the accused is alleged to have committed the offence.

(2) If the complaint is one filed under paragraph (a) of subsection (1) of section 136, the Attorney-General, Solicitor-General, a State Counsel or pleader specially or generally authorized by the Attorney-General shall except where such complaint has been filed against an officer or employee of the State in respect of a matter connected with or relating to the discharge of the official duties of such officer or employee, not have a right to appear for the complainant without his consent.

192. (1) Where the accused—

- (a) is absconding or has left the island; or
- (b) is unable to attend or remain in court by reason of illness and either had consented to the commencement or continuance of the trial in his absence or such trial may commence and proceed or continue in his absence without prejudice to him; or
- (e) by reason of his conduct in court is obstructing or impeding the progress of the trial,