

abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

240. Withdrawal of remaining charges on conviction on one of several charges. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry, into, or trial of such charge or charges. Such withdraw 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order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.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 XX - OF THE TRIAL OF CASES BY MAGISTRATE

241. Procedure in trial of cases. The following procedure shall be observed by Magistrate in the trial of cases.

241-A. Supply of statements and documents to the accused. (1) In all cases instituted upon police report, except those tried summarily or punishable with fine or imprisonment not exceeding six months, copies of statements of all witnesses recorded under sections 161 and 164 and of the inspection note recorded by an investigation officer on his first visit to the place of occurrence, shall be supplied free of cost to the accused not less than seven days before the commencement of the trial;

Provided that if any part of a statement recorded under section 161 is such that its disclosure to the accused would be inexpedient in the public interest such part of the statement shall be excluded from copy of the statement furnished to the accused.

(2) in all cases instituted upon a complaint in writing, the complainant shall;

(a) state in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of the evidence which he is likely to adduce at the trial; and

(b) within three days of the order of the Court under section 204 for issue of process to the accused, file in the Court for supply to the accused, as many copies of the complaint and any other document which it has filed with his complaint as the number of the accused;

Provided that the provisions of this sub-section shall not apply in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties.]

[242. Charge to be framed. When the accused appears or is brought before the Magistrate, a formal charge shall be framed relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged.]

243. Conviction on admission of truth of accusation. If the accused admits that he has committed the offence [with which he is charged] his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

244. Procedure when no such admission is made. (1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed

to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

Provided that the Magistrate shall not be bound to hear any person as a complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directing him to attend or to produce any document or other thing.]

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court:

[Provided that it shall not be necessary for the accused to deposit any such expenses in Court in case where he is charged with an offence punishable with imprisonment exceeding six months.]

[244-A. Statement made under section 164. The statement of a witness duly recorded under section 164, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of Evidence Act, 1872.]

245. Acquittal. (1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

[245-A. Procedure in case of previous convictions. In a case where a previous conviction is charged under the provisions of section 221, subsection (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the accused under section 243, or under section 245, subsection (2), take evidence in respect of the alleged previous conviction, and, if he does so, shall record a finding thereon.]

246. [Omitted by Law Reforms Ordinance, XII of 1972, item 95].

247. Non-appearance of complainant. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day:

Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case:

[Provided further that nothing in this section shall apply where the offence of which the accused is charged is either cognizable or non-compoundable.]

248. Withdrawal of complaint. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

249. Power to stop proceedings when no complainant. In any case instituted otherwise than upon complaint a Magistrate of the first class, or with the previous sanction of the [Sessions Judge, in the case of

Judicial Magistrate and District Magistrate in the case of Executive Magistrate,] may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

[249-A. Power of Magistrate to acquit accused at any stage. Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if, after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence.]

FRIVOLOUS ACCUSATIONS IN [CASES TRIED BY MAGISTRATES].

250. False frivolous or vexatious accusations. (1) If in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate, by whom the case is heard [...] acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may by his order of [...] acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or if such person is not present direct the issue of a summons to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show and if he is satisfied that the accusation was false and either frivolous or vexatious, may, for reasons to be recorded, direct that compensation to such amount not exceeding [twenty five thousand rupees] or if the Magistrate is a Magistrate of the third class not exceeding [two thousand and five hundred] rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(2A) The compensation payable under sub-section (2) shall be recoverable as an arrear of land revenue.]

(2B) When any person is imprisoned under sub-section (2A), the provisions of section 68 and 69 of the Pakistan Penal Code shall, so far as may be. apply.]

(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account, in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under subsection (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made, in case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

- (d) the name of the complainant (if any);
- (e) the name, parentage and residence of the accused;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e) clause (f) or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed.
- (g) the plea of the accused and his examination (if any),
- (h) the finding, and, in the case of a conviction, a brief statement of the reason therefore,
- (i) the sentence or other final order, and
- (j) the date on which the proceedings terminated.

[264. Record in appealable cases. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in section 263 and shall, before passing any sentence, record a judgment in the case.]

265. Language of record and judgment. (1) Record made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

(2) Bench may be authorized to employ clerk. The Provincial Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

CHAPTER XXII-A - TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION

[265-A. Trial before Court of Session to be conducted by Public Prosecutor. In every trial before a Court of Session, initiated upon a police report, the prosecution shall be conducted by Public Prosecutor.

265-B. Procedure in cases triable by High Courts and Courts of Session. The following procedure shall be observed by the High Courts and the Courts of Session in the trial of cases triable by the said Courts.

265-C. Supply of statements and documents to accused. (1) In all cases instituted upon police report, copies of the following documents shall be supplied free of cost to the accused not later than seven days before the commencement of the trial, namely:

- (a) the first information report;

(b) the police report;

(c) the statements of all witnesses recorded under sections 161 and 164, and

(d) the inspection note recorded by an investigating officer on his first visit to the place of occurrence and the note recorded by him on recoveries made, if any:

Provided that, if any part of a statement recorded under section 161 or section 164 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused.

(2) In all cases instituted upon a complaint in writing:

(a) the complainant shall;

(i) state in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of evidence which he is likely to adduce at the trial, and

(ii) within three days of the orders of the Court under Section 204 for issue of process to the accused, file in the Court for supply to the accused, as many copies of the complaint and any other document which he has filed with his complaint as the number of the accused; and

(b) copies of the complaint and any other documents which the complainant has filed therewith and the statements under section 200 or section 202 shall be supplied free of cost to the accused not later than seven days before the commencement of the trial.

265-D. When charge is to be framed. If, after perusing the police report or, as the case may be, the complaint, and all other documents and statements filed by the prosecution, the Court is of opinion that there is ground for proceeding with the trial of the accused it shall frame in writing a charge against the accused.

265-E. Plea. (1) The charge shall be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty the Court shall record the plea, and may in its discretion convict him thereon.

265-F. Evidence for prosecution.(1) If the accused does not plead guilty or the Court in its discretion does not convict him on his plea, the Court shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution:

Provided that the Court shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Court shall ascertain from the public prosecutor or, as the case may be, from the complainant, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon such persons to give evidence before it.

(3) The Court may refuse to summon any such witness, if it is of opinion that such witness is being called for the purpose of vexation or delay or defeating the ends of justice. Such ground shall be recorded by the Court in writing.

(4) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

(5) If the accused puts in any written statement, the Court shall file it with the record.

(6) If the accused, or any one of several accused, says that he means to adduce evidence, the Court shall call on the accused to enter on his defence and produce his evidence.

(7) If the accused or any one or several accused, after entering on his defence, applies to the Court to issue any process for compelling the attendance of any witness for examination or the production of any document or other thing, the Court shall issue such process unless it considers that the application is made for the purpose of vexation or delay or defeating the ends of justice such ground shall be recorded by the Court in writing.

265-G. Summing up by prosecutor and defence. (1) In case where the accused, or any one of several accused, does not adduce evidence in his defence, the Court shall on the close of the prosecution case and examination (if any) of the accused call upon the prosecutor to sum up his case whereafter the accused shall make a reply.

(2) In cases where the accused, or any one of the several accused examines evidence in his defence, the Court shall, on the close of the defence case, call upon the accused to sum up the case whereafter the prosecutor shall make a reply.

265-H. Acquittal or conviction. (1) If in any case under this Chapter in which a charge has been framed the Courts finds the accused not guilty, it shall record an order of acquittal.

(2) If in any case under this Chapter the Court finds the accused guilty the Court shall, subject to the provisions of Section 265-I. pass a sentence upon him according to law.

265-I. Procedure in case of previous conviction. (1) In a case where, by reason of a previous conviction the accused has been charged under Section 221, sub-section (7) the Court, after finding the accused guilty of the offence charged and recording a conviction shall record the plea of the accused in relation to such part of the charge.

(2) If the accused admits that he has been previously convicted as alleged in the charge, the Court may pass a sentence upon him according to law, and if the accused does not admit that he has been previously convicted as alleged in the charge the court may take evidence in respect of the alleged previous conviction, and shall record a finding thereon and then pass sentence upon him according to law.

265-J. Statement under section 164 admissible. The statement of a witness duly recorded under Section 164, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Evidence Act, 1872 (II of 1872).

265-K. Power of Court to acquit accused at any stage. Nothing in this Chapter shall be deemed to prevent a Court from acquitting an accused at any stage of the case; if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence.

265-L Power of Advocate-General to stay prosecution. At any stage of any trial before a High Court under this Code, before the sentence is passed, the Advocate-General may, if he thinks fit, inform the Court on behalf of Government that he will not prosecute the accused upon the charge, and thereupon all proceedings against the accused shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding judge otherwise directs.

265-M. Time of holding sittings. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

265-N. Place of holding sittings. (1) The High Court shall hold its sittings at the place at which it held them immediately before the commencement of the Law Reforms Ordinance, 1972, or at such other place (if any) as the Provincial Government may direct.

(2) But the High Court may, from time to time, with the consent of the Provincial Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(3) Such officer as the Chief Justice directs shall give prior notice in the Official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court].

CHAPTER XXIII - OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSIONS

266-336. ***** [Omitted by Law Reforms Ordinance, 1972. item 105].

CHAPTER XXIV - GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

337. Tender of pardon to accomplice. (1) In the case of any offence triable exclusively by the High Court or Court of Sessions, or any offence punishable with the imprisonment which may extend to ten years, or any offence punishable under section 211 of the Pakistan Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Pakistan Penal Code, namely, sections 216A, 369, 401, 435 and 477A, (the District Magistrate or a Sub-divisional Magistrate) may, at any stage of the investigation or inquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether, as principal or abettor, in the commission thereof:

[x xx x xx]

[Provided that no person shall be tendered pardon who is involved in an offence relating to hurt or qatl without permission of the victim or, as the case may be, of the heirs of the victim.]

(1A) Every Magistrate who tenders a pardon under subsection (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record:

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

[(2) Every person accepting a tender under this section shall be examined as a witness in the subsequent trial, if any.]