CRPC NOTES-3

POWER OF MAGISTRATE TO CONTROL DISPUTE OVER POSSESSION OF AN IMMOVEABLE PROPERTY

When and what powers can be used by the magistrate to control dispute over possession of an immoveable property? Can possession be restored back to person dispossessed?

What order can be passed by a magistrate if any apprehension of breach of peace is brought to his notice regarding immoveable property?

INTRODUCTION

RELEVANT PROVISIONS

Section 145 of Cr.P.C

POWER OF MAGISTRATE TO CONTROL DISPUTE OVER POSSESSION OF IMMOVEABLE PROPERTY UNDER SECTION 145

A magistrate of first class can exercise powers to control dispute over possession of an immoveable property which is likely to cause breach of the peace in police report or other information.

ESSENTIALS FOR EXERCISING POWERS BY MAGISTRATE

I- EXISTENCE OF DISPUTE

II- SATISFACTION OF MAGISTRATE

III- DISPUTE CONCERNING LAND

IV- DISPUTE LIKELY TO CAUSE BREACH OF PEACE

V- LAND MUST BE WITHIN JURISDICTION

MAKING OF ORDER

After being satisfied from police report or other information that there is a dispute exists regarding land which is likely to cause breach of the peace, he shall make the order in writing.

SERVICE OF ORDER

An order shall be served in following manner;

I- IN MANNER OF SUMMONS

II- PUBLICATION OF ORDER NEAR DISPUTE

POWERS OF MAGISTRATE

A magistrate can exercise the following powers in respect of the disputed property.

I- DETERMINE THE FACT OF ACTUAL POSSESSION

II- HEAR THE PARTIES

III- RECEIVING OF EVIDENCE

IV- TAKES FURTHER EVIDENCE

V- DECISION AS TO POSSESSION

VI- ATTACHMENT OF PROPERTY

VII- CANCELLATION OF ORDER OF ATTACHMENT

VIII- APPOINTMENT OF RECEIVER

IX- ADDITION AS TO PARTIES

X- DECLARATION OF ENTITLEMENT OF POSSESSION

XI- RESTORATION OF POSSESSION

XII- ORDER FOR DISPOSAL OR SALE

XIII- ISSUING SUMMONS TO ANY WITNESS

XIV- REFERRING PARTIES TO COURT OF COMPETENT JURISDICTION

The magistrate can refer the parties to a court of competent jurisdiction after attaching the property if

i) More of the parties are found in possession. Or

ii) The magistrate is unable to satisfy himself as to which of the parties were at the relevant time in possession.

EFFECT OF ORDER MADE UNDER SECTION 145

An order under section 145 is final and conclusive and is intended to be effective until the party in whose favour the order is made is evicted in due course of law.

REMEDY AGAINST SUCH ORDER

The remedy for the unsuccessful party is to file a civil suit.

SUBORDINATION OF POWER OF MAGISTRATE

Powers of criminal Courts in proceedings under section 145 Cr.P.C are subordinate to powers of civil courts which have dealt with the same property.

ARREST WITHOUT WARRANT

• State circumstances under which the police officer may arrest a person without obtaining a warrant from the court?

• Can police arrest a person even if he has not committed any offence?

• What is arrest without warrant? How and when it is made by whom under what pretext? What are the checks and balances to prevent misuse of this unlimited power? (PCS)

• CAN POLICE ARREST A PERSON EVEN IF HE HAS NOT COMMITTED ANY OFFENCE?

INTRODUCTION

RELEVANT PROVISIONS

Sections 54 to 59, 64, 65, and 151 of CrPC.

ARREST WITHOUT WARRANT

Following persons may arrest without warrant

i- Any Police Officer

ii- Officer-in-Charge of a Police Station

iii- Private Person

iv- Magistrate

OBJECT TO ARREST A PERSON WITHOUT WARRANT

ARREST BY ANY POLICE OFFICER

i) PERSON CONCERNED IN COGNIZABLE OFFENCE

ii) PERSON IN POSSESSION OF IMPLEMENT OF HOUSE BREAKING

iii) PROCLAIMED OFFENDER

iv) PERSON IN POSSESSION OF STALER PROPERTY

v) PERSON OBSTRUCTING POLICE OFFICER

vi) DESERTER FROM THE ARMED FORCES

vii) PERSON APPREHENDED UNDER EXTRADITION LAW

viii) RELEASED CONVICT

ix) PERSON FOR WHOSE ARREST REQUISITION HAS RECEIVED

x) PERSON COMMITTED NON-COGNIZABLE OFFENCE IN PRESENCE OF POLICE

xi) PERSON DESIGNING TO COMMIT COGNIZABLE OFFENCE

xii) PERSON WHOSE REMISSION OR SUSPENSION HAS CANCELLED

ARREST BY OFFICER IN-CHARGE

I- ANY PERSON TRYING TO CONCEAL HIMSELF

II- PERSON WHO HAS NO OSTENSIBLE MEANS OF SUBSISTENCE

III- HABITUAL OFFENDER

ARREST BY PRIVATE PERSON U/SEC 59

i) PERSON COMMITTED NON-BIALLABLE OFFENCE

ii) PROCLAIMED OFFENDER

ARREST BY A MAGISTRATE

I) PERSON COMMITS AN OFFENCE IN HIS PRESENCE

II) PERSON FOR WHOSE ARREST HE CAN ISSUE WARRANT

ARREST TO PREVENT SUCH OFFENCES U/SEC 151 CrPC

PERSON ARRESTED NOT BE DETAINED MORE THAN 24 HOURS U/SEC 61 CrPC FRAMING OF CHARGE

What is charge? How it is framed and what are its contents?

What is charge? How it is framed under Cr.P.C? Can it be amended during the trial?

Can a person charged with one offence be convicted of another?

Can a person charged with one offence? If so when?

What is a charge? What are its objects? What particulars are required to be stated in the charge?

What ate the essentials of a charge? Discuss effects of different types of errors in the charge.

INTRODUCTION

RELEVANT PROVISIONS

Sections 221, 222, 223, 227, 228, 229, 230, 237, 238

MEANING AND DEFINITION OF CHARGE

Definition According To Section 4(c)

OBJECTS OF FRAMING OF CHARGE

PARTICULARS OF FRAMING OF CHARGE

In framing of charge, following essentials must be fulfilled:

I- STATE THE OFFENCE

II- OFFENCE BY NAME

III- LAW AND SECTION OF OFFENCE

IV- LANGUAGE OF CHARGE

V- REDUCED IN WRITING

VI- PREVIOUS CONVICTION

VII- PARTICULARS AS TO TIME PLACE AND PERSON

It is necessary that charge should contain particulars as to;

i) Time of Offence.

ii) Place of Offence.

iii) Person Against Whom Offence Was Committed.

iv) Thing Against Whom Offence Was Committed.

VIII- MANNER OF COMMITTING OFFENCE

AMENDMENT OR ALTERATION IF CHARGE U/SEC 227

CHARGE NOT PREJUDICE THE ACCUSED OR PROSECUTION U/SEC 228

CHARGE PREJUDICE THE ACCUSED OR PROSECUTION U/SEC 229

STAY OF PROCEEDINGS IF ALTERED CHARGE REQUIRES PREVIOUS SANCTION U/SEC 230

PERSON CHARGED WITH ONE OFFENCE BE CONVICTED OF ANOTHER

I- GENERAL RULE U/SEC 237

II- EXCEPTIONS

III- SUBSECTION 3 OF SECTION 238

INQUIRY INVESTIGATION TRIAL

Define and differentiate inquiry, investigation, and trial.

INTRODUCTION

INQUIRY

I- DEFINITION OF INQUIRY ACCORDING TO SECTION 4(1)(K)

II- AUTHORITY TO CONDUCT INQUIRY

III- OBJECT OF INQUIRY

IV- NOT AN EXHAUSTIVE DEFINITION

INVESTIGATION

I- DEFINITION U/SEC 4(1)(L)

II- NATURE OF INVESTIGATION

III- OBJECT OF INVESTIGATION

IV- AUTHORITY TO INVESTIGATE

V- COMMENCEMENT OF INVESTIGATION

The investigation commences in the following two ways

i) When FIR is lodged

ii) When complaint is made to the magistrate then any person authorized by the magistrate can conduct the investigation.

TRIAL

I- DEFINITION

“A formal examination of evidence in a court of law in order to decide if a person is guilty of a crime.”

II- PRESUMPTION REGARDING TRIAL

III- COMMENCEMENT OF TRIAL

IV- PROCEDURE FOR TRIAL

Procedure for trials has been provided by the different provisions of CrPC as under;

i) Trials by magistrate section 241-250

ii) Summary Trial section 260-265

iii) Trial by High Court and Court of Session 265-A to 265-N

V- END OF TRIAL

DIFFERENCE BETWEEN INQUIRY, INVESTIGATION AND TRIAL

I- AS TO COMMENCEMENT

Inquiry It commences when complaint is field to the magistrate.

Investigation It commences when FIR is lodges or complaint is made to the magistrate.

Trial It starts either by framing of charge or arrangement of the accused.

II- PRESUMPTION AS TO COMMISSION OF OFFENCE

Inquiry There is no presumption as to commission of an offence.

Investigation There is no presumption as to commission of an offence.

Trial Trial pre-supposes the commission of an offence.

III- AS TO DEFINITION

Inquiry The term inquiry is defined by CrPC.

Investigation Investigation has been defined by CrPC.

Trial The expression trial has not been defined by CrPC.

IV- END OF PROCEEDINGS

Inquiry If evidence is not found then it can be discharged.

Investigation If evidence is not found then it can be discharged.

Trial it either ends in conviction or in acquittal.

V- CONDUCTING AUTHORITY

Inquiry It can be conducted by a magistrate or the court

Investigation it can be conducted by a police officer or any person authorized by a magistrate.

Trial it can be conducted by a magistrate or judge.

VI- PURPOSE

Inquiry its purpose is to ascertain the truth or falsity of facts of the case.

Investigation its purpose is the collection of evidence regarding the guilt of the accused.

Trial its purpose is to determine the guilt of the accused.

VII- BAR TO SUBSEQUENT PROCEEDINGS

Inquiry this can be conducted again.

Investigation this can be conducted again.

Trial trial barred the subsequent proceedings i.e. principal of double jeopardy.

TRANSFER OF CASES

• What are the powers of High Court to transfer cases from one criminal court to another?

• On what grounds High Court can transfer any criminal case from its subordinate court to another court.

INTRODUCTION

RELEVANT PROVISIONS

Following are the relevant provisions;

Section 526 Cr.P.C

Cross Reference

Sections 527 and 528

TYPES OF TRANSFER OF CRIMINAL CASES

A criminal case may be transferred by the following authorities;

i- High Court under section 526

ii- Provincial Government under section 527

iii- Session Judge under section 528

TRANSFER OF CRIMINAL CASE BY HIGH COURT UNDER SECTION 526

OBJECTS OF SECTION 526

Section 526 has two-fold objects;

i- To provide convenience to the parties and witnesses.

ii- To ensure that justice should be done beyond all doubts.

MODES OF TRANSFER

I- APPLICATION BY PARTY INTERESTED

II- APPLICATION BY LOWER COURT

III- SUO MOTU ORDER

GROUNDS FOR TRANSFER OF CASES UNDER SECTION 526

I- FAIR AND IMPARTIAL TRIAL NOT POSSIBLE

II- UNUSUAL DIFFICULTY IN QUESTION OF LAW

III- WHERE SCENE OF OFFENCE IS NECESSARY

IV- GENERAL CONVENIENCE TO PARTIES

V- EXPEDIENT IN THE ENDS OF JUSTICE

ORDER PASSED BY HIGH COURT UNDER SECTION 526

EXCEPTION TO SECTION 526

PROCLAMATION FOR PERSON ABSCONDING

• What conditions is precedent for proclamation? What penalties in law can be imposed upon absconder?

• What is the legal procedure to be adopted for the surrender of an absconder? Can his property be attached? If so, what?

• How and in what manner an absconder is declared a proclaimed offender? Quote the law.

• How and under what circumstances orders for proclamation and attachment of the property of person absconding are issued?

INTRODUCTION

RELEVANT PROVISIONS

Following are the relevant provisions of the concerned topic;

Sections 87, 88, 89 of CrPC

MEANING OF ABSCONDER

Absconder is a person who intentionally avoids or conceals himself for the purpose of avoiding the execution of the warrant.

PROCLAMATION FOR PERSON ABSCONDING U/SEC 87

I- CONDITIONS FOR PROCLAMATION

Before issuing proclamation, following conditions must be satisfied;

I) ISSUANCE OF WARRANT

II) ABSCONDANCE OF PERSON

III) SATISFACTION OF COURT

II- CONTENTS OF PUBLICATION

i- Name and Address of Absconder

ii- Offence in which he is required

iii- Statement requiring that he must appear before the court

iv- Specification of date not less than 30 days from the date of its publication for the appearance of the absconder.

III- MANNER OF PROCLAMATION

The proclamation shall be published in the following manner;

I- Publicly read

II- Affixation at some conspicuous part of home of accused

III- Affixation of copy at the court

IV- WRITTEN STATEMENT BY COURT U/SEC 87(3)

ATTACHMENT OF PROPERTY OF PERSON ABSCONDING U/SEC 88

I- TIME FOR ATTACHMENT

II- JURISDICTION TO ORDER ATTACHMENT

PROPERTY OUT SIDE JURISDICTION

III- PROPERTY WHICH CAN BE ATTACHED

IV- MODE OF MAKING ATTACHMENT

V- SALE OF PROPERTY

VI- CLAIM OR OBJECTION

PROCEDURE WHEN ABSCONDER APPEARS BEFORE COURT

WHEN ABSCONDER DOES NOT APPEAR BEFORE THE COURT

RESTORATION OF ATTACHED PROPERTY U/SEC 89

I- APPEARANCE OF PERSON IN COURT

II- SATISFACTION OF COURT

III- WHERE PROPERTY HAS BEEN SOLDTRIAL BY COURT OF SESSION

• What procedure does the Court of Session follow in the trial of a murder case?

• Describe briefly the procedure of trial of a case by Court of Session.

INTRODUCTION

RELEVANT PROVISIONS

Following are the relevant provisions of CrPC regarding the topic.

Sections 265-A to 265-N

MEANING OF TRIAL

The term trial has not been defined by CrPC. It may be defined as under:

“A formal examination of evidence in a court of law in order to decide if a person is guilty of a crime.”

PROCEDURE GIVEN IN CRPC FOR THE TRIALS BY HIGH COURT AND COURT OF SESSION

The procedure for trials by the High Court and the Court of Session has been divided into two categories in CrPC.

1- Challan Case

2- Complaint Case.

COGNIZANCE OF OFFENCES BY COURT OF SESSION U/SEC 193

PROSECUTION WHERE TRIAL INITIATED UPON POLICE REPORT U/SEC 265-A

PROCEDURE TO BE FOLLOWED BY COURT OF SESSION U/SEC 265-B

Following procedure shall be followed in a trial by the Court of Session.

I- SUPPLY OF STATEMENTS AND DOCUMENTS U/SEC 265-C

CASES INSTITUTED UPON POLICE REPORT

The following documents shall be supplied free of cost to the accused not later than 7 days before commencement of the trial;

a) FIR

b) POLICE REPORT

c) STATEMENTS OF WITNESSES RECORDED U/SEC 161 AND 164 CrPC

d) INSPECTION NOTES RECORDED BY IO

e) RECOVERY NOTES

CASES INSTITUTED UPON COMPLAINT

The following documents shall be supplied free of cost to the accused not later than 7 days before commencement of the trial;

a) COMPLAINT WHICH IS MADE

b) ANY DOCUMENT ATTACHED WITH THE COMPLAINT

c) STATEMENTS MADE UNDER SECTIONS 200 AND 202 OF CrPC

II- FRAMING OF CHARGE U/SEC 265-D

III- PLEA U/SEC 265-C

IV- RECORDING OF EVIDENCE U/SEC 265-F

If the accused does not plead guilty or the Court does not convict him guilty in its discretion, the court shall proceed to hear the complainant and take all evidence produced by the prosecution.

i) Summoning Of Witnesses

ii) Accused to Be Asked To Adduce Evidence

iii) Evidence Adduced By the Accused

iv) Issuing Of Process

a) Compelling the attendance of any witness or

b) Production of any document or

c) Any other thing.

The court shall issue such person

V- SUMMING UP U/SEC 265-G

Where Accused Adduce Evidence

VI- JUDGMENT U/SEC 265-H

WHERE ACCUSED IS GUILTY

WHERE ACCUSED IS NOT GUILTY

VII- POWER OF COURT TO ACQUIT ACCUSED AT ANY STAGE U/SEC 265-K

SENTENCE WHICH REQUIRES CONFIRMATION

• In what cases sentence awarded by courts always require confirmation in order to make at final? What court confirms it and what are the powers of appellate court in such cases?

INTRODUCTION

RELEVANT PROVISION

Section 374 to 382 of CrPC.

SENTENCE WHICH REQUIRES CONFIRMATION U/SEC 374

When the Court of Session passes sentence of death the High Court confirms the sentence.

SUBMISSION OF PROCEEDINGS BY THE COURT OF SESSION

POWERS OF HIGH COURT U/Sec 375

I- FURTHER INQUIRY

II- TAKE ADDITIONAL EVIDENCE

MODE OF MAKING INQUIRY OR TAKING EVIDENCE

i- High Court may make inquiry or take additional evidence itself.

ii- High court may direct to Court of Session to make inquiry or take additional evidence.

PRESENCE OF CONVICTED PERSON IS NOT NECESSARY

The presence of convicted person is not necessary.

POWER OF HIGH COURT TO CONFIRM OR ANNUAL CONVICTION U/SEC 376

I- CONFIRM THE SENTENCE

II- PASS ANY OTHER SENTENCE

III- ANNUAL THE CONVICTION

IV- ORDER A NEW TRIAL

V- ACQUIT THE ACCUSED

CONFIRMATION OR NEW SENTENCE TO BE SIGNED BY TWO JUDGES U/SEC 377

PROCEDURE IN CASE OF DIFFERENCE OF OPINION U/SEC 378

PROCEDURE IN CASE SUBMITTED TO HIGH COURT FOR CONFIRMATION U/SEC 379

EXECUTION OF ORDER PASSED U/SEC 376, U/SEC 381

i- By issuing a warrant; or

ii- Taking such other steps as may be necessary

Exception

POSTPONEMENT OF DEATH SENTENCE ON PREGNANT WOMAN U/SEC 382

NHERENT POWER OF COURT

• Discuss in detail with reference to law power of High Court by means of which relief can be granted although there is no provision in Cr.P.C.

INTRODUCTION

MEANING OF INHERENT POWER

“An authority possessed without its being derived from another.”

RELEVANT PROVISIONS

Section 561-A Cr.P.C

Section 151 C.P.C

Section 16 General Clauses Act

Article 183 and 199 of Constitution of Pakistan

INHERENT POWER OF COURT UNDER SECTION 561-A

NATURE OF INHERENT POWER

BASIS OF INHERENT POWER

The inherent powers of the court are based on the following maxim

UBI JUS ABI REMEDIUM

There is no wrong without remedy

WHEN INHERENT POWER CAN BE USED UNDER SECTION 561-A

High court can exercise inherent powers under section 561-A Cr.P.C in the following cases

I- IN ABSENCE OF EXPRESS PROVISION OF LAW

II- TO GIVE EFFECT TO ANY ORDER UNDER Cr.P.C

III- TO PREVENT ABUSE OF PROCESS OF ANY COURT

IV- TO SECURE ENDS OF JUSTICE

SECTION 249-A, 265-K AND 561-A Cr.P.C

LIMITATIONS OR RESTRICTIONS AGAINST THE ARBITRARY EXERCISE OF INHERENT POWER

Following are the restrictions on the inherent powers of the courts;

i) Inherent powers cannot be extended to make a new law on the subject

ii) It cannot be used against the express intention of the legislature.

iii) It cannot be used where there is other remedy is provided.

iv) It cannot override the express provision of law.

v) It should not be exercised to assist a party guilty of leaches or delay.

INSTANCES OF INHERENT POWER

Following are some of the instances of inherent powers of Court under section 561-A

i- CORRECTION OF ERRORS

ii- QUASHMENT OF PROCEEDINGS

iii- STAY OF PROCEEDINGS

CONCLUSIVENESS OF FINDINGS OF HIGH COURT UNDER SECTION 561-A

COMPOUNDABLE OFFENCES

• What is compoundable offence? What is the legal effect of a valid composition? How would you differentiate between withdrawal of a case and composition of an offence?

• Which are compoundable offences? When and who can compound the offence of murder?

INTRODUCTION

RELEVANT PROVISIONS

Section 345 is the relevant provision of the concerned topic.

MEANING OF COMPOSITION

“A composition is an agreement or settlement of difference between the injured party and against whom the complaint is made.”

MEANING OF COMPOUNDABLE OFFENCE

A offence which can be legally settled for consideration between the party against whom the offence is committed and by whom the offence is committed is said to be compoundable offence.

SCOPE OF SECTION 345

KINDS OF COMPOUNDABLE OFFENCES U/SEC 345

Compoundable offences are of the following two kinds

i- Offences compoundable without permission of the court.

ii- Offences compoundable with the permission of the court.

ESSENTIALS FOR COMPOUNDING U/SEC 345

Following are the essentials for compounding as offence

I- COMPOUNDABLE OFFENCE

II- COMPROMISE BETWEEN PARTIES

III- WITH OR WITHOUT CONSIDERATION

IV- AGREEMENT FOR COMPROMISE

V- FREE WILL OF PARTIES

VI- COMPROMISE MUST BE MADE BY PERSON MENTIONED IN TABLE U/SEC 345

VII- WITH OR WITHOUT PERMISSION OF COURT

WHO CAN COMPOUND THE OFFENCE OF MURDER

The following persons can compound the offence of murder;

i- Qatal-i-amad under section 302

ii- Qatal under ikrah-i-tam under section 303

iii- Qatal-i-amad not liable to Qisas under section 308

iv- Qatal-i-shibh-i-amad under section 316

v- Qatal-i-khata by rash or negligent driving under section 320

vi- Qatal-bis-sabab under section 322

vii- Attempt to commit Qatal-i-amad under section 324

PROCEDURE TO BE ADOPTED

COMPROMISE IN ABETMENT OR IN ATTEMPT TO COMMIT AN OFFENCE U/SEC 345(3)

PERSON COMPETENT TO COMPOUND IS MINOR, IDIOT OR LUNATIC

COMPOSITION IN PENDING APPEAL U/SEC 345(5)

COMPOSITION IN REVISION U/SEC 345(5)

EFFECT OF COMPOSITION U/SEC 345(6)

BAR ON COMPOSITION U/SEC 345(7)

TIME FOR COMPOSITION

DIFFERENCE BETWEEN WITHDRAWAL CASE AND COMPOSITION OF AN OFFENCE

I- AS TO NATURE

II- SATISFACTION OF MAGISTRATE

III- AS TO DISCRETION

IV- AS TO OFFENCE

APPEAL AGAINST ACQUITTAL

• Discuss in detail the procedure laid down in law to life an appeal from an order of acquittal.

• Does an appeal lie from an order of acquittal?

INTRODUCTION

RELEVANT PROVISIONS

Section 411-A, 417, 422, 423 of Cr.P.C

APPEAL AGAINST ACQUITTAL

It may be divided into categories

i- Appeal against order of acquittal passed by high court.

ii- Appeal against order of acquittal passed by any court other than high court.

APPEAL AGAINST ORDER OF ACQUITTAL PASSED BY HIGH COURT UNDER SECTION 411-A

I- FORUM OF APPEAL

a) Shall be filled to the Division Bench of High Court composed of not less than two judges, other than the judges who heard the trial.

b) If it is not possible to constitute the Division Bench than the appeal may be transferred by the Provincial Govt. under section 527 Cr.P.C to another High Court.

II- GROUNDS OF APPEAL

INST ORDER OF ACQUITTAL PASSED BY ANY COURT OTHER THAN HIGH COURT UNDER SECTION 417

Appeal may lie to the high court against an order of acquittal passed by any court other than high court.

I- FORUM OF APPEAL

II- WHO MAY APPEAL UNDER SECTION 417

a) Provincial Government

b) Complaint

c) Any Aggrieved Person

A- PROVINCIAL GOVERNMENT

Provincial government may file an appeal through the public prosecutor, against an order of acquittal, whether original or appellate, passed by any court other than a high court.

B- COMPLAINT

If an order of acquittal is passed in a case instituted upon a complaint, the complaint may file an appeal to the High Court after fulfilling following conditions

i) Application for leave to appeal

Complaint has to file an application to the High Court for the grant of special leave to appeal against an order of acquittal.

ii) Limitation

An application has to be made within a person of six months from the date of an order of acquittal.

C- ANY AGGRIEVED PERSON

By virtue of sub-section 2-A of section 417, any person aggrieved by an order of acquittal may file appeal against it.

NOTICE TO ACCUSED UNDER SECTION 422

POWERS OF APPELLATE COURT IN AN APPEAL AGAINST ACQUITTAL UNDER SECTION 423

In disposing appeal against acquittal, appellate court may order the following

i) Dismiss the appeal; or

ii) Reserve such order and direct further inquiry be made; or

iii) Direct the re-trial of the accused; or

iv) Sent the accused for trial to the court of session or High court; or

v) Finds him guilty and passed sentence according to law

V- EFFECT

JOINDER OF CHARGES

• What persons may be charged jointly? Discuss in detail.

• What are necessary elements of charge? How it is framed whether separate charge should be framed for every distinct offence?

• Explain the term joinder of charge? Enumerate the provisions contained in Cr.P.C.

• What is meant by joinder of charges? Discuss in detail the law on the subject.

INTRODUCTION

RELEVANT PROVISIONS

Section 234, 235, 236 and 239

SEPARATE CHARGES FOR DISTINCT OFFENCES UNDER SECTION 233

For every distinct offence of which any person is accused, there shall be a separate charge and such charge shall be tried separately.

JOINDER OF CHARGES--- EXCEPTIONS TO THE RULE MENTIONED IN SECTION 233

Following are the exceptions to the rule mentioned in section 233

I- MORE THAN ONE OFFENCES OF SAME KIND WITHIN A YEAR MAY BE CHARGED TOGETHER UNDER SECTION 234

II- TRIAL FOR MORE THAN ONE OFFENCES UNDER SECTION 235

III- OFFENCES FALLING WITHIN TWO DEFINITIONS UNDER SECTION 235

IV- ACTS CONSTITUTING ONE OFFENCE BUT CONSTITUTES A DIFFERENT OFFENCE WHEN COMBINED

V- OFFENCE FOR WHICH A PERSON MIGHT HAVE BEEN CHARGED UNDER SECTION 236

VI- WHAT PERSONS MAY BE CHARGED JOINTLY UNDER SECTION 239

Following persons may be charged jointly

i) Persons accused of the same offence committed in the course of same transaction.

ii) Persons accused of an offence and persons accused of any abetment or an attempt to commit it.

iii) Persons accused of more than one offences of the same kind committed jointly within a year.

iv) Persons accused of different offences committed in the course of same transaction.

v) Persons accused of theft, extortion or criminal misappropriation and persons accused of receiving or retaining or assisting in the disposal or concealment of the property obtained in the commission of these offences.

vi) Persons accused of an offence under chapter XII P.P.C relating to counterfeit coin and person accused of any other offence relating to the same coin, or of abetment or attempt to commit such offence.