

MISCELLANEOUS JUDICIAL PROBLEMS OF THE CIVIL JUDGES (JUNIOR DIVISION)/JUDICIAL MAGISTRATES

*[Prepared & compiled in response to queries of the Probationer Civil Judges (Junior Division)/
Judicial Magistrates at the IJTR, UP, Lucknow]*

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Q.1. Whether a woman who has already been granted maintenance under the provisions of Domestic Violence Act, 2005 is still entitled to the claim of maintenance u/s 125 of the CrPC ?

Ans. In the cases noted below, it has been repeatedly held by the Hon'ble Supreme Court and the Hon'ble Allahabad High Court that if some amount of maintenance has already been awarded by the court u/s24 of the Hindu Marriage Act, 1955 and the wife still moves some application before the Magistrate u/s125 CrPC for grant of interim or final maintenance, the application u/s125 CrPC would not be barred merely because the wife has already been awarded maintenance under Hindu Marriage Act, 1955. It has also been held that even if no maintenance under the H.M. Act, 1955 has been awarded but the application is only pending even then the fresh application u/s125 CrPC or already pending application under 125 CrPC would not be barred. However, it has been held that the maintenance awarded under the H.M. Act would be considered and adjusted by the Magistrate while fixing the amount of maintenance u/s125 CrPC payable to the wife/applicant. Kindly see :

1. Sudeep Chaudhary vs. Radha Chaudhary, 1999 CrLJ 466 (SC)
2. Smt. Pushpa Devi vs. Anup Singh, 1985 (22) ACC 114 (All)
3. Rajendra Prasad Gupta vs. State of UP, 1990 (27) ACC 395 (All) (DB)
4. Rajesh Kurre vs. Safurabai, 2009 CrLJ (NOC) 446 (Chhattisgarh High Court)--Note: This ruling is on the point of Sec. 20 of the Domestic Violence Act, 2005 and Sec. 125 CrPC.

Q.2 Whether a civil suit instituted for cancellation of a compromise decree passed on account of fraud etc. requires to be registered as regular suit or only as civil miscellaneous case?

Ans. (A) A civil suit is instituted by filing a plaint therein. (Sec. 26 CPC r/w. O. 4, R. 1 CPC)

(B) Fraud vitiates the most solemn act or judicial proceedings. A fraud renders the proceedings and the relief granted wholly non est i.e. non existent and ineffective from very inception. See :

1. State of A.P. vs. T. Suryachandra Rao, 2005 (33) AIC 761 (SC)
2. Roshan Deen vs. Preetilal, 2002 (1) SCC 100
3. Ram Preeti Yadav vs. UP Board of High School & Inter Ed., 2003 (8) SCC 311
4. Ram Chandra Singh vs. Savitri Devi, 2003 (8) SCC 319
5. Ashok Leyland Ltd. vs. State of T.N., 2004 (3) SCC 1

6. Gowri Shanker vs. Joshi Amba Shankar, Family Trust, 1996 (3) SCC 310
 7. S.P. Changal Varaya Naidu vs. Jagannath, 1994 (1) SCC 1
 8. Shrisht Dhawan (Smt.) vs. M/s. Shaw Brothers, 1992 (1) SCC 534
- (C) Compromise decree obtained by fraud and the remedy of affected party. See :
1. Gurpreet Singh vs. Chatur Bhuj Goel, (1988) 1 SCC 270
 2. Banwari Lal vs. Chando Devi (Smt.), (1993) 1 SCC 581
- (D) The different nature of proceedings as classified by Supreme Court are as under :
- (i) Regular proceeding
 - (ii) Miscellaneous proceeding
 - (iii) Ancillary proceeding
 - (iv) Incidental proceedings
 - (v) Supplemental proceeding
 - (vi) Auxiliary proceeding
- Vareed Jacob vs. Sosamma Gee Verghese, (2004) 6 SCC 378
- (E) Procedural defects not to render proceedings illegal. If a regular civil suit was tried by court as per the procedure prescribed and no injustice was caused to either side, then merely because the proceeding that is the regular suit was registered only as civil miscellaneous case and not as regular suit, would not render the proceeding of the decree passed therein as illegal or void. Procedure is subservient to justice and not master of it. See : Uday Shanker Triyar vs. Ram Kelewar Prasad Singh, 2006 (1) ARC 1 (SC : Three-Judge Bench)
- (F) Compromise arrived at by fraud deserves to be cancelled. Where an Advocate had, to the detriment of his client, entered into compromise with the other side unauthorisedly, the Supreme Court not only set aside the compromise decree but also empowered the party to move to the State Bar Council for taking appropriate action against the Advocate playing fraud upon the party. See : Ram Asray & others vs. DDC, Faizabad, (1998) 6 SCC 480

Q.3 Whether some person can be temporarily authorized or permitted to act on behalf of the regularly appointed mutwalli of waqf property and whether an application u/o 6, rule 17 CPC alone can be moved for the purpose?

Ans. Normally under such conditions, no question of substitution of new mutwalli in the place of already appointed one arises. Similarly there being no need for amendment in the pleadings in the plaint, an application u/o. 6, rule 17 CPC is also not required. But permission of the court upon an application of the person claiming to have been authorized to act for the time being on behalf of the regularly appointed mutwalli is certainly required. As regard the question of substitution, Order 22 CPC r/w. O. 6, rule 17 CPC r/w. rule 37 G.R. Civil can be looked into.

Q.4 Whether a compromise on behalf of the party can be entered into by his counsel?

Ans. **Compromise by counsel** : (A) After the amendments in O. 23, rule 3 CPC in the year 1976, a compromise needs to be reduced in writing and signed by the parties and not by the counsel alone. See :

1. Gurpreet Singh vs. Chatur Bhuj Goel, (1988) 1 SCC 270
2. Banwari Lal vs. Chando Devi, (1993) 1 SCC 581
3. Dr. Jitendra Kumar Jain vs. ADJ, Roorkee, AIR 2006 (NOC) 1248 (All)

(B) **Compromise by counsel held valid** : The words 'in writing and signed by the parties', inserted in O. 23, R. 3, CPC by the C.P.C. (Amendment) Act, 1976 necessarily mean and include duly authorized representative and Counsel. Thus a compromise in writing and signed by counsel representing the parties, but not signed

by the parties in person, is valid and binding on the parties and is executable even if the compromise relates to matters concerning the parties, but extending beyond the subject matter of the suit. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn-out fight. A compromise decree creates an estoppel by judgment. Counsel's role in entering into a compromise has been traditionally understood to be confined to matters within the scope of the suit. However, a compromise decree may incorporate not only matters falling within the subject matter of the suit, but also other matters which are collateral to it. The position before the amendment in 1976 was that, in respect of the former, the decree was executable, but in respect of the latter, it was not executable, though admissible as judicial evidence of its contents. See :

1. Byram Pestonji Gariwala vs. Union Bank of India, AIR 1991 SC 2234
 2. Jineshwardas vs. Smt. Jagrani, 2003 (53) ALR 599 (SC)
- (C) Memo of compromise u/o 23, rule 3 CPC (as amended in 1976) must be in writing and must be signed by parties. This is a mandatory requirement and in the absence of compliance of this mandatory requirement, court should not accept the compromise as mere signature of counsel on compromise is not sufficient. See :
1. Prem Lata vs. Ist Civil Judge, Meerut, 1998 (32) ALR 352 (All)
 2. Lokumal Topan Dass vs. Allahabad Bank, AIR 1998 All 398
- (D) **Concession made before court by counsel when binding on the party** : A concession made before court by counsel is binding on the party whom he represents and such party cannot resile therefrom subject to just exceptions. But a wrong concession made by a counsel on point of law would not be binding on the party concerned. Legal right possessed by a person, if waived, enforcement thereof cannot be thereafter insisted upon. See : BSNL vs. Subhash Chandra Kanchan, (2006) 8 SCC 279

Q.5 Whether in a compromise petition filed in a suit some other property which is a subject matter of a suit can also be incorporated and compromise can be struck in respect of such property also?

Ans. Yes. In a suit which is compromised u/o 23, rule 3 CPC, it is not imperative for the parties to confine to the reliefs prayed for in the suit. It may not even be confined to the subject matter of the suit. See : Smt. Tulsan vs. Pyare Lal, 2006 (65) ALR 472 (SC)

Q.6 Whether a civil court has jurisdiction to order dissolution of a muslim marriage on the application of muslim wife?

Ans. Yes. Kindly see Sec. 2 of The Dissolution of Muslim Marriages Act, 1939.

Q.7 What are the essential requirements which must be proved in a suit for declaration of civil death of a person?

Ans. Kindly see Sec. 107 & 108 of the Evidence Act. Before granting the relief of declaration regarding civil death of a person, the requirements of law as provided u/s107 and 108 Evidence Act shall have to be proved by the party. See :

1. Rababbuddin Sheikh vs. State of Gujarat, AIR 2007 SC 1914 (D.B.)
2. Saroop Singh vs. Banto, AIR 2005 SC 4407 (D.B.)
3. LIC of India vs. Anuradha, AIR 2004 SC 2070 (D.B.)
4. N. Jayalakshmi Ammal vs. R. Gopala Pathar, AIR 1995 SC 995 (D.B.)
5. Vemarededi Ramaraghava Reddy vs. Konduru Seshu Reddy, AIR 1967 SC 436 (D.B.)
6. Ramrati Kuer vs. Dwarika Prasad Singh, AIR 1967 SC 1134 (D.B.)

7. Baru (deceased) vs. Tej Pal, AIR 1998 All 230

On Sec. 34 S.R. Act, 1963, kindly see :

1. Bendangmeren Longchar vs. Merazulu, AIR 1994 Gauhati 109
2. LIC of India vs. Tufan Mondal, AIR 1999 Calcutta 104 (D.B.)
3. State of M.P. vs. Mangilal Sharma, AIR 1998 SC 743 (D.B.)
4. Syed Saulat Hussain vs. Syed Ilmuddin, AIR 1981 Rajashan 29 (D.B.)
5. Mahant Indra Narain Das vs. Mahant Ganga Ram Das, AIR 1955 All 683 (D.B.)
6. Nawab Humayun Begam vs. Nawab Shah Mohammad Khan, AIR (30) 1943 PC 94

Q.9A Whether any errors or mistakes having crept in application etc. moved by an accused or his counsel can be permitted to be rectified by the criminal court?

Ans. In the case noted below, the Allahabad High Court has held that though there is no specific provision in CrPC for amendment of errors etc. in the memo of appeal or application in a criminal proceeding, but courts need not apply hyper technical approach in allowing the accidental and bonafide mistakes to be corrected. The courts may permit correction of bonafide errors and omissions in the applications etc. in the criminal proceedings. See :

1. Dashnami vs. State of UP, 1999 Criminal Reporter (Hindi) 68 (Allahabad)
2. Shaikh Salim Haji vs. Kumar, 2006(1) ARC 334(SC)

Q.9B Merits of the case not to be discussed when court has no jurisdiction:

It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. Kindly see: **Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083**

Q.10 Whether an order passed by criminal court can be reviewed or recalled? What is the extent of powers or a criminal court in rectifying its mistakes etc. u/s 362 of the CrPC ?

Ans. (A) Review or recall of order already passed by a criminal court is not permissible under CrPC Even High Court cannot review or recall an order passed u/s482 CrPC Sec. 362 CrPC mandates that no court, when it has signed its judgment or final order disposing of the case, shall alter or review the same except to correct a clerical or arithmetical error. See :

1. Hari Singh Mann vs. Harbhajan Singh Bajwa, AIR 2001 SC 43
 2. Sunita Jain vs. Pawan Kumar Jain, 2008 (61) ACC 355 (SC)
 3. State of Kerala vs. M.M. Manikantan Nair, AIR 2001 SC 2145 (Three-Judge Bench)
 4. Adalat Prasad vs. Rooplal Jindal, (2004) 7 SCC 338 (Three-Judge Bench)
 5. Bindeshwari Pd. Singh vs. Kali Singh, AIR 1977 SC 2432
- (B) Where Magistrate had issued a process to one of many accused u/s204 CrPC saying that the same was issued by mistake, it has been held that order passed by a Magistrate recalling process to such accused was proper. See : Minu Kumari vs. State of Bihar, 2006 (55) ACC 541 (SC)
- (C) An order being a result of mistake of court, duty of court is to recall such order. See : Mahendra Pratap vs. State of UP, 1993 ACrR 169 (All)

(D) Where a criminal revision was dismissed in default by the revisional court, explaining the provisions of Sec. 362 CrPC, it has been held by the Allahabad High Court that since there is no provision in CrPC for dismissal of a criminal

revision in default or for want of prosecution, such order can be recalled by the court. See :

1. Munshi vs. State of UP, 2007 (59) ACC 592 (All)
2. Rakesh Kumar Kesarwani vs. State of UP, 2007 (59) ACC 892 (All)

Q.11 Whether an accused can be heard by Magistrate before accepting or rejecting a final report submitted by the I.O.?

Ans. A Magistrate is not obliged to hear the accused before accepting or rejecting the F.R. See : Ranjeet Singh vs. State of UP, 2000 (40) ACC 342 (All--F.B.)

Q.11A What are the legal options available to a Magistrate when some of the accused named in the FIR are charge sheeted and FR has been sent in respect of other remaining accused persons and the Magistrate proposes not to take cognizance against some of the accused named in the FIR?

Ans. On receiving FR in respect of some of the accused persons, Magistrate is bound to give notice to informant if he decides not to take cognizance against all or some of the accused. See :

1. Sanjay Bansal vs. Jawajarla Vats, AIR 2008 SC 207
2. Bhagwant Singh vs. Commissioner of Police, AIR 1985 SC 1285

Q.11B Whether Magistrate is competent to order further investigation u/s173(8) CrPC after accepting the FR?

Ans. Yes. After accepting the FR, a Magistrate can still direct the police u/s173(8) CrPC for further investigation. See :

1. Union Public Service Commission vs. S. Papaiah, (1997) 7 SCC 614
2. Kishan Lal vs. Dharmendra Bafna, 2009 (66) ACC 936 (SC)

Q.12 Whether a third party or a stranger can also be heard in a criminal proceeding without the consent of the Public Prosecutor? If yes, under what conditions?

Ans. An aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them. Though there is no obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased in order to provide him an opportunity to be heard at the time of consideration of the final report of the police (except when the final report is to the effect that no offence had been made out in the case) the informant who lodged the FIR is entitled to a notice from the Magistrate. In other instances, the injured or any relative of the accused can appear before the Magistrate at the time of consideration of the police report if such person otherwise comes to know that the Magistrate is going to consider the report. If such person appears before the Magistrate, it is the duty of the Magistrate to hear him. See : M/s JK International vs. State, JT 2001 (3) SC 130

Q.13 What are the options and duties of a Magistrate when FIR has not been registered by SHO despite the order passed by the Magistrate u/s156(3) CrPC having been duly conveyed to the SHO?

Ans. (A) If an order passed by Magistrate u/s156(3) CrPC for registration of FIR is not complied with by the SHO, the Magistrate should ensure that the order is complied with and the case is registered and investigated. In case of non-compliance, the Magistrate can take action against the station officer. See :

1. 2000 (41) ALR 91 (All)
2. Bhagwati Prasad vs. State of UP, 1996 (33) ACC 639 (All)

(B) **Magistrate to report to SSP/DGP/Govt./RG alongwith quarterly statements in the event of dis-obedience of orders u/s156(3) CrPC**: If the SHO fails to register FIR and investigate the same in compliance with any order of the Magistrate passed 156(3) CrPC, following duty has been cast by the Hon'ble Allahabad High Court (judgment delivered by Hon'ble Sudhir Agarwal, J.) upon the Magistrates of the State of UP When a Police Officer-in-Charge of the police station or any other police Officer, acting under the directions of the Officer-in-charge of police station refused to register an information disclosing a cognizable offence, the informant may either approach the Superintendent of Police u/s154(3) or the Magistrate concerned u/s156(3) of the Code. If the Informant approaches the Superintendent of Police, who finds that the refusal of registration of FIR by the police Officer-in-Charge of the police station was unjust or for reasons other than valid, and where he directs for investigation, he shall initiate disciplinary proceedings against the Officer-in-charge of the police station for such non observance of statutory obligation treating the same to be a serious misconduct justifying a major penalty and complete the proceedings within three months from the date he passes an order for investigation into the matter. Where, the informant approaches the Magistrate concerned u/s156(3) of the Code and the Magistrate ultimately finds that information discloses a cognizable offence and direct the police to proceed for investigation, he shall cause a copy of the order sent to Superintendent of Police/Senior Superintendent of Police (hereinafter referred to as the SP/SSP) of the concerned district and such SP/SSP shall cause a disciplinary inquiry into the matter to find out the person guilty of such dereliction of duty i.e. failure to discharge statutory obligation i.e. registration of an information disclosing cognizable offence treating the said failure as a serious mis-conduct justifying major penalty and shall complete the disciplinary proceedings within three months from the date of receipt of the copy of the order from the concerned Magistrate. After completing the disciplinary proceedings, the SP/SSP concerned shall inform about the action taken against the concerned police Officer-in-Charge of the police station to the Magistrate concerned within 15 days from the date of action taken by him but not later than four months from the date of receipt of the copy of the order from the Magistrate concerned. The Magistrate concerned shall review the cases in which the copy of the orders passed u/s156(3) of the Code has been sent to concerned SP/SSP quarterly and when it is found that the concerned SP/SSP has also failed to comply with the above directions of this Court, he shall sent a copy of his order alongwith the information about non-compliance of this Court's order/direction by the concerned SP/SSP to the Director General of Police, UP, Lucknow and the Principal Secretary (Home), UP, Lucknow who shall look into the matter and take appropriate action as directed above against the police Officer-in-charge of the police station concerned for his inaction also into the matter within three months and communicate about the action within next one month to the Magistrate concerned. The Principal Secretary (Home), UP, Lucknow and the Director General of Police, UP, Lucknow shall also submit a report regarding number of the cases informed by the concerned Magistrate in a calendar year and also the action taken, by them as directed above by the end of the February of every year to the Registrar General of this Court. Besides above, non compliance of the above directions of this Court shall also be treated to be a deliberate defiance by the concerned authorities above mentioned constituting contempt of this Court and may be taken up before the Court concerned having jurisdiction in the matter, whenever it is brought to the notice of this Court. The Registrar General of this Court is directed to send a copy of this order forthwith to the Principal Secretary (Home), UP, Lucknow,

the Director General of Police, UP, Lucknow so that they may issue necessary instructions in respect of the compliance of the various directions contained in the judgment to the concerned SP/SSP of the concerned districts of the State of UP and also to the various Police Officers-in-charge of the concerned police stations apprising them about the directions of this Court and for compliance thereof. See : Roop Ram vs. State of UP, 2009 (5) ALJ 211 (All)

Q. 14 What is the power, purpose and procedure to be adopted by criminal court in issuing warrant 'B' u/s267 of the CrPC ? Whether warrant 'B' issued u/s267 CrPC may be treated as judicial custody?

Ans. (A) Relying upon the Supreme Court decision in Niranjana Singh vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785, the Allahabad High Court, while interpreting the provisions of Sec. 267 r/w. 439 CrPC, has held that where the accused was arrested by the police at Allahabad in relation to some crime registered at Allahabad and was detained in jail at Allahabad and the accused was also wanted for offences u/s302, 307 IPC at Mirzapur, the Sessions Judge, Mirzapur had got jurisdiction to hear the bail application of the accused treating him in custody of the Court of Sessions Judge at Mirzapur. Physical production of the accused before the Court at Mirzapur or his detention in jail at Mirzapur was not required. See :

1. Billu Rathore vs. Union of India, 1993 L.Cr.R. 182 (All)
2. Chaudhari Jitendra Nath vs. State of UP, 1991(28) ACC 497 (All)

Note: For other cases on Sec. 267 CrPC, see :

1. Nabhu vs. State of UP, 2006(55) ACC 361 (Alld) (DB)
2. Ranjeet Singh @ Laddu Singh vs. State of UP, 1995 A.Cr.R. 523 (L.B.)
3. Mohd. Dawood Quareshi vs. State of UP, 1993 (30) ACC 220
4. Mohd. Daud vs. Supdt. of Distt. Jail, Moradabad, 1993 ALJ 430 (Alld) (DB) : This judgment has been circulated amongst the judicial officers of the State of UP by the Allahabad High Court vide C.L. No. 58/23-11-1992 for observance.

(B) A production warrant issued u/s267 CrPC does not constitute a detention order authorizing detention in prison of a person. Sec. 267 and 270 CrPC read together contain a clear legislative mandate that when a prisoner already confined in a prison is produced before another criminal court for answering to a charge of an offence and is detained in or near such court for the purpose, on the court dispensing with his further attendance, has to be conveyed back to the prison from where he has been brought for such attendance. See :

1. Mohd. Daud vs. Supdt. of Distt. Jail, Moradabad, 1993 ALJ 430 (Alld) (DB)
2. Nabhu vs. State of UP, 2006(55) ACC 361 (Alld) (DB)

Q.15 Whether an accused summoned on warrant 'B' from some other district can be ordered to be lodged by the Magistrate in the jail where his court is situate?

Ans. No. Accused confined in prison in the jail of one district if produced before another criminal court in other district u/s267 CrPC in relation to some judicial proceeding, he has to be conveyed back to the prison from where he has been brought. See : Mohd. Daud vs. Supdt. of Distt. Jail, Moradabad, 1993 ALJ 430 (Alld) (DB)

Q.16 What is the power, caution and precaution to be exercised by a Magistrate while issuing process u/s82 and 83 of the CrPC?

Ans. Where the Magistrate had issued process u/s82 & 83 CrPC by one and the same order ignoring the law laid down by the Allahabad High Court in Devendra Singh Negi vs. State of UP, 1993 (30) ACC 455 (All) (LB) and the Sessions Judge has also failed to deal with the case of Devendra Singh Negi, it has been held that the Magistrate and the

Sessions Judge had not only failed to exercise their jurisdiction properly but they also defeated and frustrated the directions issued in the case of Devendra Singh Negi which was circulated by the High Court amongst the Judicial Officers of the State of UP for strict compliance. Every person who is not immediately available, cannot be characterized as an absconder. Court has to record its satisfaction that the accused has absconded or is concealing to avoid execution of warrant. Resort to process u/s82 and 83 CrPC cannot be made in every case where the warrant is not executed. See :

1. Udai Bhan Karwaria vs. State of UP, 1997 A.Cr.R. 34 (All)
2. Devendra Singh Negi vs. State of UP, 1993 (30) ACC 455 (All) (LB)
3. Kapil Muni Karwaria vs. State of UP, 1996 UPCrR 653 (All)

Q.17 When and under what conditions BW or NBW can be issued by a criminal court against an accused or any other person?

Ans. In the case noted below, the Supreme Court has ruled that BW or NBW against a person can be issued only under the following conditions :

- (1) Non bailable warrant should be issued to bring a person to court when summons or bailable warrant would be unlikely to have the desired result. NBW can be issued when it is reasonable to believe that the person will not voluntarily appear in the court, or
- (2) The police authorities are unable to find the person to serve him with a summons, or
- (3) It is considered that the person could harm someone if not placed into custody immediately.

As far as possible, if the court is of the opinion that a summons will suffice in getting the appearance of the accused in court, the summons or the bailable warrants should be preferred. Due to the extremely serious consequences and ramifications which ensue on issuance of warrants, the warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind. In complaint cases, at the first instance, the court should direct serving of summonses. In the second instance, it should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceedings intentionally, the process of issuance of NBW should be resorted to. See : Inder Mohan Goswami vs. State of Uttaranchal, AIR 2008 SC 251

Q.18 What is the starting point of the operation of a stay order? When does a stay order passed by superior court becomes operative and effective in the lower court?

Ans. (A) A stay order passed by a superior court becomes operative and takes effect from the time when it is actually communicated to the court below. See : Smt. Ram Sri vs. Dhanpat, 1980 A.Cr.R. 327 (All)

(B) Following an earlier Full Bench Decision of the Allahabad High Court reported in AIR 1927 All 401 (F.B.) and 1960 ALJ 542 (All), it has been held that a stay order is effective w.e.f. the date of its communication to the **court passing the stay order**. The stay order passed by the higher court does not have the effect of ousting jurisdiction already possessed by the subordinate court over the case pending before it. Any proceeding taken in the subordinate court in ignorance of the stay order cannot therefore be said to be null and void. See : Ram Raj vs. State of UP, AIR 1963 All 588 (DB)(LB)

(C) Meaning of staying proceedings till the next date of listing/hearing : Staying the proceeding by the High Court u/s482 CrPC till the next date of listing clearly means

that the stay order has to continue till any subsequent order is passed by the court. See : Shambhoo Nath Singh Yadav vs. State of UP, 1994 (23) ALR 32 (All)(LB)

Q.19 Whether a stay order passed by superior court continues to be operative and effective till it is vacated by passing express order?

Ans. Staying the proceeding by the High Court u/s482 CrPC till the next date of listing clearly means that the stay order has to continue till any subsequent order is passed by the court. See : Shambhoo Nath Singh Yadav vs. State of UP, 1994 (23) ALR 32 (All) (LB)

Q.20 What is the extent of powers of a Magistrate in granting exemption to an accused from personal appearance through counsel?

Ans. An accused can abstain from court during the proceedings after getting his personal appearance dispensed with u/s205 CrPC and his appearance through pleader is sufficient. While the necessary considerations in disposing of an application u/s205 CrPC to dispense with the personal appearance of the accused are that the court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. See :

1. Jimmy Jahangir Madan vs. Bolly Cariyappa Hindley, 2005 (51) ACC 23 (SC)
2. S.V. Mazumdar vs. Gujarat State Fertilizer Co. Ltd., (2005) 4 SCC 173
3. M/s. Bhaskar Industries Ltd. vs. Bhiwani Denim, 2001 (43) ACC 760 (SC)
4. Sandhya Gupta vs. State of UP, 2004 (49) ACC 529 (All)

Q.21 How should the statement of an accused recorded by an I.O. u/s161 CrPC with the signature of the accused be dealt with by the criminal courts?

Ans. (A) Bar of Sec. 162 CrPC operates against the I.O. and not against the court. See :

1. Minu Kumar vs. State of Bihar, (2006) 4 SCC 359
2. Govinda vs. State of UP, 2008 (61) ACC 486 (All)

(B) Where the I.O. had obtained signature of the witnesses on their statement recorded u/s161 CrPC, interpreting Sec. 162 CrPC, the Supreme Court has held that there is no illegality and the statements of the witnesses are not vitiated and would still be read. If the signature of the accused has been obtained by the police on the seizure memo prepared u/s27 of the Evidence Act, the proceeding as to seizure is not vitiated. See : State of Rajasthan vs. Teja Ram, 1999 (38) ACC 627 (SC)

21A. Unsigned judgment is valid: Order 20, rule 3 CPC requires that the judgment should be dated and signed by the judge in open court at the time of its pronouncement. In the case noted below where the judgment did not bear signature of the judge, the Supreme Court held that: "As soon as the judgment is delivered, that becomes the operative pronouncement of the court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form essence of the matter and if there is irregularity in carrying them out, it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication." See: **Surendra Singh Vs. State of Uttar Pradesh, AIR 1954 SC 194.**

Q.22 What is the effect of investigation of an offence by an I.O. below the rank of SHO?

Ans. (A) Explaining Sec. 168 CrPC it has been held that no doubt investigation of an offence can be done by any officer subordinate to the SHO but such I.O. shall have to submit his report to the SHO concerned who shall decide as to whether the accused should be charge sheeted u/s173(2) CrPC or not u/s169 CrPC See :

1. Smt. Leena Katiyar vs. State of UP, 2008 (62) ACC 779 (All) (DB)
2. H.N. Rishbud & Inder Singh vs. The State of Delhi, AIR 1955 SC 196
3. Abhinandan Jha vs. Dinesh Mishra, AIR 1968 SC 117

(B) (i) By virtue of its enabling power it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the 1995 Rules provide rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer. The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the CrPC when jointly read lead to an irresistible conclusion that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offences complained are both under the IPC and any of the offence enumerated in Section 3 of the Act, the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non investigation of the offence u/s3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in appropriate Court for the offences punishable under the IPC notwithstanding investigation and the charge sheet being not liable to be accepted only in respect of offence u/s3 of the Act for taking cognizance of that offence. See : State of M.P. vs. Chunnilal, 2009 (4) Supreme 418

(ii) According to Rule 7 of the SC/ST (Prevention of Atrocities) Rules, 1995, investigation of an offence committed under the SC/ST (Prevention of Atrocities) Act, 1989 cannot be conducted by a police officer below the rank of Deputy Superintendent of Police (DSP). Provisions of Rule 7 are mandatory and the charge-sheet or other proceedings initiated on the basis of an investigation conducted by a police officer below the rank of DSP being improper and bad in law deserve to be quashed. See :

- (1) M. Kathiresan vs. State of Tamil Nadu, 1999 CrLJ 3938 (Madras)
- (2) A Sasikumar vs. The Superintendent of Police, 1998 (1) CTC 276 (Madras)

(iii) Where an accused was convicted for the offences u/s3(1)(xi) of the SC & ST (Prevention of Atrocities) Act, 1989 and u/s341 IPC on the basis of an investigation and charge-sheet thereafter by a Sub-Inspector of Police, the Andhra Pradesh High Court, in appeal, set aside the conviction of the accused u/s3(1)(xi) of the 1989 Act on the ground that the Sub-Inspector of Police was not authorized for investigation under Rule 7 of the SC/ST (Prevention of Atrocities) Rules, 1995 but the conviction u/s341 IPC was found proper as the Sub-Inspector of Police was competent in law to investigate the offence u/s341 IPC. See : D. Ramalinga Reddy vs. State of A.P., 1999 CrLJ 2918 (AP)

Q.23 Whether civil and criminal proceedings both may go on simultaneously in respect of the same act or transactions?

Ans. (A) Yes. If the allegations disclose a criminal offence and the ingredients of offence are available, remedy under criminal law is not barred. Civil and criminal proceedings may go on simultaneously. See : -

1. Indian Oil Corporation vs. NE PC India Ltd., (2006) 6 SCC 736

2. Hindustan Petroleum Corporation Ltd. vs. Sarvesh Berry, AIR 2005 SC 1406
 3. Ajeet Singh vs. State of UP, 2006 (6) ALJ 110 (All--F.B.)
 4. K.A. Mathani vs. Kora Bibbikutty, 1996 (7) SCC 212
 5. Jagdish Chandra Nijhawan vs. S.K. Saraf, (1999) 1 SCC 119
 6. Charanjit Singh Chandra vs. Sudhir Mehra, (2001) 7 SCC 417
 7. Lalmuni Devi vs. State of Gujarat, (2001) 2 SCC 17
 8. M. Krishnan vs. Vijai Singh, (2001) 8 SCC 645
 9. Rajneesh Agarwal vs. Amit J. Bhalla, 2001 JIC 704 (SC)
- (B) In the (cases noted below) matters of agreement for sale and sale deeds etc., it has been held that the dispute between the parties was only that of civil nature only and criminal law was not attracted. See :
1. B. Suresh Yadav vs. Sharifa Bee, AIR 2008 SC 210
 2. Inder Mohan Goswami vs. State of Uttaranchal, AIR 2008 SC 251
 3. All Cargo Movers (I) Pvt. Ltd. vs. Dhanesh Badarmal Jain, AIR 2008 SC 247

Q.24 Whether only an I.O. can move an application to the Magistrate for recording of statement of the accused or of any witness etc. u/s164 CrPC or an accused, witness or anybody else can also directly request the Magistrate for recording the same u/s164 CrPC?

Ans. No. A witness etc. cannot on his motion approach a Magistrate with request that his statement may be recorded u/s164 CrPC Magistrate has no power to record statement of such a stranger u/s164 CrPC See : Jogendra Nahak vs. State of Orissa, 1999 (4) Crimes 12 (SC)

Q.25 What is the stage of raising plea of sanction as required u/s197 CrPC?

Ans. Plea of sanction can be raised only at the time of taking cognizance of the offence and not against the registration of FIR, investigation, arrest, submission of police report u/s173(2) CrPC or remand of accused u/s167 CrPC See : State of Karnataka vs. Pastor P. Raju, AIR 2006 SC 2825

Q.26 What are the options and powers of a Magistrate in granting or refusing remand of an accused u/s167 CrPC when no application seeking further remand of the accused has been moved by the IO, no case diary has been produced and even accused has not been produced before the Magistrate?

Ans. (A) Though the physical production of the accused before the Magistrate is desirable, yet the failure to do so would not per se vitiate the order of remand if the circumstances for non-production were beyond the control of the prosecution or the police. Remand order passed u/s167 or 309 CrPC in the event of non-production of the accused would not be illegal. See :

1. Raj Narain vs. Superintendent, Central Jail, New Delhi, AIR 1971 SC 178 (Seven-Judge Bench)
 2. Gauri Shankar Jha vs. State of Bihar, AIR 1972 SC 711
 3. Sandeep Kumar Dey vs. The Officer Incharge, AIR 1974 SC 871
 4. Ramesh Kr. Ravi alias Ram Prasad vs. State of Bihar, 1987 CrLJ 1489 (Patna--F.B.)
- (B) A Magistrate has jurisdiction u/s167 CrPC to pass an order of remand despite absence of any formal written application or a request for such remand being made by the police or the prosecution. See :
1. Ramesh Kr. Ravi alias Ram Prasad vs. State of Bihar, 1987 CrLJ 1489 (Patna--F.B.)
 2. Kuli Singh vs. State of Bihar, 1978 CrLJ 1575 (Patna--F.B.)

Q.27 What are the powers, functions and limitations of an APO posted in a magisterial court? Whether and under what conditions a private counsel engaged by the complainant can be permitted to do *pairvi* on behalf of the prosecution?

- Ans. (A) See : Sec. 301 & 302 CrPC
- (B) Investigation and prosecution are two different facets in the administration of criminal justice. The role of public prosecutor is inside the court, whereas the investigation is outside the court. Normally the role of PP commences after investigating agency presents the case in the court on culmination of investigation. Its exception is that PP may have to deal with all applications moved by the parties concerned at any stage. Involving PP in investigation is injudicious as well as pernicious to law. The High Court committed an illegality in directing the FR to be taken back and to file a fresh report incorporating the opinion of the PP. See : K. Sarla vs. T.S. Velu, (2000) 3 SCC 398
- (C) Complaint instituted by private complainant, offence is triable exclusively by court of sessions. In the sessions court a public prosecutor alone can conduct prosecution. See : Rosy vs. State of Kerala, 2000 (40) ACC 444 (SC)
- (D) Sec. 301(1) and 301(2) CrPC : A trial before court of sessions can be conducted for prosecution by PP only. However, complainant can engage a private counsel. But such counsel cannot get the status of a PP. PP cannot abdicate his powers in favour of a person who is not a PP. U/s225 and 301(2) CrPC, a privately engaged counsel may not have any liberty to lead prosecution evidence or to do the duties entrusted by law to a PP. See : Rajesh Kumar vs. State of UP, 1998 (37) ACC 867 (All)
- (E) Sec. 301, 302, 225 CrPC : In a sessions trial, prosecution has to be conducted by a PP. Role of private counsel engaged by a party, would be to act under his guidance. A private counsel if allowed a free hand, he would focus on bringing the case to conviction even if it is not a fit case to be so convicted. The role which a private counsel can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is to act on behalf of the PP albeit the fact he is engaged in the case by a private party. If the role of the PP is allowed to shrink to a mere supervisory role, the trial would become a combat between the private party and the accused which would render the legislative mandate in Sec. 225 CrPC a dead letter. See : Shiv Kumar vs. Hukum Chand, 1999 All JIC 788 (SC)
- (F) Sec. 301, 302 CrPC : APO permitted private counsel engaged by complainant to cross-examine the DWs and to address the court, APO's permission in writing, private counsel can cross-examine DWs and address the court. See : Kartika Chandra Bhattacharya vs. State of UP, 1993 (30) ACC 688 (All)
- (G) Sec. 493 CrPC : Complainant himself has no *locus standi* u/s493 but the counsel for the complainant can move application under the directions of the PP requesting the court to take finger impressions of the accused and to send them to the Govt. handwriting and finger print expert for the purpose of comparison. See : Iqbal Ahmad vs. Ketki Devi, 1976 CrLJ 244 (All)
- (H) Sec. 301 CrPC : It cannot be assumed that the legislature intended that any advocate engaged by a complainant shall remain just a silent spectator and would not contribute positively to the proceedings of the court but certainly he has to act under the directions of the PP. The word used in Sec. 301(2) CrPC means to have a right to address the court, to examine and cross-examine the witnesses. See : Suresh Chandra Sharma vs. State of UP, 1986 (23) ACC 234 (All)

- (I) Sec. 301 & 301(2) CrPC : Trial before court of sessions to be conducted by PP (ADG Cr.) only. However, complainant can engage a private counsel but such counsel cannot get the status of a PP. PP cannot abdicate his powers in favour of a person who is not a PP. Privately engaged counsel may not have any liberty to lead prosecution evidence or to do the duties entrusted by law to a PP. See : Rajesh Kumar vs. State of UP, 1998 (37) ACC 867 (All)

Note: In this case Sri MPS Rana, Advocate, Etah, privately engaged counsel by the complainant was stopped by the ASJ to examine-in-chief the PW on behalf of the prosecution as no permission by the PP/ADGC (Cr.) Sri B.N. Dixit was granted to Sri MPS Rana Advocate to conduct the case on behalf of the prosecution, order of the ASJ refusing permission to Sri MPS Rana Advocate to examine-in-chief the PW was upheld by the High Court.

- (J) Trial in court of sessions can be conducted by PP alone whether the case was instituted on police report or on complaint. See : Rosy vs. State of Kerala, 2000 (40) ACC 444 (SC)

Note: It was a case u/s208 CrPC on complaint.

Q.28 What is the legal effect of an illegal custody and detention of an accused?

Ans. (A) In the case noted below, the accused was into illegal judicial custody for the offences u/s498-A, 304-B IPC as Magistrate had not granted further remand of the accused u/s167 CrPC, cognizance of the offence was not taken by the Magistrate on receipt of charge sheet from the I.O., no remand order was passed u/s209(b) CrPC, no order was passed remanding the accused to judicial custody, case was committed by the Magistrate to Court of Sessions ordering the production of the accused before the Court of Sessions, no order by the Magistrate was passed even on that date u/s209(b) CrPC, there was no remand order though case was pending before the Sessions Court but custody of the accused was continuing, then it has been held by the Allahabad High Court that the custody/detention of the accused without there being any remand order was naturally illegal but no law recognizes grant of bail to accused on the basis of such illegal custody/detention and the bail was consequently refused. Custody includes both legal and illegal imprisonment and court can rectify its mistake and transform the illegal custody/imprisonment of the accused into legal custody/imprisonment. See :

1. Sheo Kumar vs. State of UP, 2001 (1) JIC 7 (All)
2. Surjit Singh vs. State of UP, 1984 ALJ 375 (All--Full Bench)

(B) Relying upon a Full Bench Decision of the Allahabad High Court in the case of Surjit Singh vs. State of UP, 1984 ALJ 375 (All--Full Bench), a Division Bench of the Allahabad High Court has held that recording of reasons for remand to custody u/s309 CrPC is not necessary. Remand u/s309 CrPC stands on a quite different footing than the one u/s167 CrPC where the remand is sought pending investigation and the Magistrate or Judge is required to apply his judicial mind to consider whether on the materials collected by the I.O. remand is necessary and justified. Even if initial remand is invalid, the same can be rectified by subsequent remand orders. The word "custody" used u/s309 CrPC embraces both legal as well as illegal custody. See : Mohd. Daud vs. Supdt. of Distt. Jail, Moradabad, 1993 ALJ 430 (Alld) (DB)

Q.29 What are the powers and options of a Magistrate u/s167 CrPC when an accused has been produced before him beyond 24 hours from the time of the arrest of the accused?

- Ans. (A) Where the accused was found to be involved into offence under NDPS Act in two different states and he was earlier arrested in one state and was granted bail by the High Court of that state and the accused could not be produced within 24 hours after his arrest in another state, it has been held that the arrest in another state becomes illegal. The accused was directed to be released from custody on executing bond pursuant to the order of the High Court in earlier case. The police officer who conducts investigation cannot obviate the legal obligation to perform two requisites if he knows that investigation cannot be completed within 24 hours after arrest of the accused. One requisite is, to transmit a copy of the case diary to the nearest judicial magistrate. The other is, to forward the accused to such magistrate simultaneously. The only exceptional ground on which the police officer can avoid producing the arrested person before such magistrate is when the officer concerned is satisfied that there are no grounds for believing that the information or accusation was well-founded. In such a case, the accused must be released from custody to which he was interned pursuant to the arrest. If the police officer is forbidden from keeping an arrested person beyond 24 hours without order of a Magistrate, what should happen to the arrested person after the said period. It is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the procedure established by law. Close to its heels, the Constitution directs that the person arrested and detained in custody shall be produced before the nearest magistrate within 24 hours of such arrest. The only time permitted by Article 22 of the Constitution to be excluded from the said period of 24 hours is “the time necessary for going from the place of arrest to the court of Magistrate”. Only under two contingencies can the said direction be obviated. One is when the person arrested is an “enemy alien”. Second is when the arrest is under any law for preventive detention. In all other cases the Constitution has prohibited pre-emptorily that “no such person shall be detained in custody beyond the said period without the authority of a magistrate”. See : Manoj vs. State of M.P., AIR 1999 SC 1403
- (B) The period of production of an accused within 24 hours from the time of his arrest which a police officer is entitled to have u/s57 CrPC before the Magistrate u/s167 CrPC for remand etc. is besides the journey period. See : Cheganti Satyanarayana vs. State of A.P., AIR 1986 SC 2130

Q.30 Whether the penal sections mentioned in the FIR, case diary and the application of the I.O. seeking remand of the accused u/s167 CrPC can be disagreed and Magistrate can grant remand or bail under different penal sections than the ones mentioned by the I.O.?

Ans. Yes. Magistrate is not bound by the penal sections mentioned by the I.O. in the remand application or in any other police papers. After perusing the case diary/police papers or the material collected by the I.O., a Magistrate can insert a different penal section in the remand order or in any other judicial order than the one mentioned by the I.O. in his application etc. See :

1. Arshad vs. State of UP, 2008 (61) ACC 863 (All)
2. Dinesh Kumar vs. State of UP, 1997 UPCR. 776 (All)
3. Harihar Chaitanya vs. State of UP, 1990 CrLJ 2082 (All)

Q.31 What is the extent of power of interference by a Magistrate into investigation of an offence by the police?

Ans. (A) Investigating agency and the adjudicatory authority are the two inseparable wings of the criminal justice system. Crime detection, which is exclusive function of the State has been entrusted to the police. Rights and duties of the police in the matter of investigation of a cognizable offence are enumerated in Chapter XII of the code under caption “information to the police and their powers to investigate”. The legislature, in its wisdom, has not conferred any power upon the Magistrate to interfere with or to have control over the investigation of the crime by the police. See :

1. C.L. No. 13/2004, dated 31.3.2004 issued by Hon’ble Allahabad High Court in compliance with the Division Bench Judgment dated 21.11.2003 passed by the Hon’ble Allahabad High Court in Criminal Misc. Writ Petition No.6417/2002 Govind & others vs. State of UP & others.
2. Union of India vs. Prakash P. Hinduja, JT 2003 (5) SC 300

(B) **Magistrate ordering registration of FIR & investigation thereof can monitor the investigation** : The Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition u/s482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies u/ss. 36 and 154(3) before the concerned police officers, and if that is of no avail, u/s156(3) CrPC before the Magistrate or by filing a criminal complaint u/s200 CrPC and not by filing a writ petition or a petition u/s482 CrPC In Union of India vs. Prakash P. Hinduja and another, 2003 (6) SCC 195 (vide para 13), it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application u/s156(3) CrPC is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer-in-charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate). See : Judgment dated 7.12.2007 delivered by Hon’ble Supreme Court in Appeal (Criminal) 1685/2007, Sakiri Vasu vs. State of UP, 2008 (60) ACC 689 (SC). Copy of this judgment has been directed by the Hon’ble Supreme Court to be sent to the Registrar Generals of all the High Courts with the direction to circulate the same amongst all the Hon’ble Judges of all the High Courts.

Note: Correctness of the decision in Sakiri Vasu vs. State of UP, 2008 (60) ACC 689 (SC) = (2008) 2 SCC 409 has been doubted by a bench of equal strength of the Supreme Court in the case of Kishan Lal vs. Dharmendra Bafna, 2009 (66) ACC 936 (SC) & Dharmeshbhai Vasudevabhai vs. State of Gujarat, 2009 CrLJ 2969 (SC)

Q.32 Whether an accused can be taken into custody by a Magistrate upon his surrender application even without calling for report from the police station concerned?

Ans. The practice of some of the subordinate Magistrates not to permit an accused to surrender when they make such request and simply ask the Public Prosecutor to report is not proper. When an accused surrenders in court and makes an application stating that he is wanted in the crime, his prayer should be accepted. The practice of postponing surrender application is not fair and cannot be approved. Things may,

however, stand differently if the surrender application does not specifically mention that the person surrendering is wanted in a case or that the police may be asked to report if he is wanted at all. See : Devendra Singh Negi vs. State of UP, 1993 A.Cr.R. 184 (All)

Q.33 What is the legal position on the point of doing remand work etc. u/s167 CrPC by the Magistrate by visiting hospital or jail etc.?

Ans.

Q.34 What are the options and powers of a Magistrate when an accused produced into custody in the court escapes from the court or custody?

Ans. Kindly see : Sec. 223, 224, 225, 225-A, 225-B of the IPC.

Q.35 What is the extent of powers of a Magistrate in scrutinizing the evidence/material on record at the time of commitment of the case to sessions u/s208/209 of the CrPC?

Ans. A Magistrate while committing a case to court of sessions, is required to look into the entire case in a very narrow parameter. At the stage of Sec. 209 CrPC, Magistrate is forbidden to apply his mind to the merit of the matter and determine as to whether any accused need be added or subtracted to face trial before the court of session. Magistrate cannot go into the question of paucity or adequacy of evidence for the purposes of commitment of the case to the sessions. See :

1. **Sarabjit Rick Singh vs. Union of India, 2008 (61) ACC 1003 (SC)**
2. **Raj Kishore Prasad vs. State of Bihar, 1996 JIC 951 (SC)**
3. **Rao Sahab Yadav vs. State of UP, 2006 (55) ACC 756 (All)**

Q.36 What are the options of a Magistrate at the time of commitment of a criminal case to sessions when the bail order and the bail bonds of the accused are missing?

Ans. Kindly see :

- (i) Rule 216 G.R. (Civil)
- (ii) C.L. No. 108-C, dated 16th December, 1959
- (iii) C.L. No. 116/c, dated 5th August, 1974
- (iv) C.L. No. 41/4C, dated 22nd June, 1964
- (v) On being satisfied (from the bail order if available) that the accused was earlier released on bail but his bail papers are missing or not available and to cut short the delay in the commitment of the case to sessions, fresh bail bonds/sureties etc. as directed in the bail order can be taken from the accused and the case may be committed to sessions thereafter as is the prevalent practice among the magistracy in the State of UP

Q.37 What is the position of law on the point of 'hearing' of the prosecution and the defence at the time of framing of the charges in a criminal case?

Ans. Sec. 226 and 227 CrPC (Sec. 239 & 240 CrPC in the matter of Magistrate triable cases) require hearing of the prosecution and the accused before charge or discharge. Passing of preliminary order before framing of charges u/s228 CrPC has been the settled practice in the trial Courts though recording of preliminary order prior to framing of charges is not imperative or absolute because outright framing of charge itself amounts to a prima-facie or preliminary order and recording of reasons for framing charges separately is not required vide :

1. **Omwati vs. State of Delhi, (2001) 4 SCC 333**

2. Kanti Bhadra Shah vs. State of W.B., 2000(40) ACC 441 (SC).

However, as S. 226 & 227 CrPC (Sec. 239 & 240 CrPC in the matter of Magistrate triable cases) require hearing of the prosecution and the accused before framing of the charge or discharge of the accused, trial courts should give opportunity to prosecution and the accused to be heard before the charge or discharge. Excerpts from the following Supreme Court ruling on the point of “hearing” is quite noticeable here : :

“Right of a man to be heard in his defence is the most elementary protection and is the essence of fair adjudication. Even God did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God “where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat.” See : Suresh Chandra Nauhorya vs. Rajendra Rajak, 2006(65) ALR 333 (SC).

Q.38 What are the options and powers of a Magistrate in a warrant triable and summon triable complaint case u/s249 and 256 respectively when the complainant has died or is absent?

- Ans. (A) If the complainant is absent on any date in a warrant triable case, before proceeding u/s249 CrPC, the Magistrate must see that the essential elements of Sec. 249 CrPC (noted below) are fulfilled :
- (i) The proceedings should have been instituted on a complaint.
 - (ii) On date of hearing the complainant should be absent.
 - (iii) The offence should be lawfully compoundable or such as is not a cognizable offence.
 - (iv) The order of discharge of the accused should be passed only before the framing of charges. See : Sawan Singh vs. Manohar Singh, 1989 (26) ACC 154 (All)
- (B) Death of complainant : In the case of death of the complainant, heirs may be permitted to continue prosecution. But holder of power of attorney cannot claim a right to prosecute the proceedings of a summon triable complaint case on the death of the complainant (It was a complaint case involving offence u/s138 N.I. Act, 1881). See : 2005 CrLJ 112 (SC)
- (C) On death or non-appearance of complainant, a complaint cannot be dismissed outright u/s249 or 256 CrPC Presence of complaint is not always mandatory. Complainant (dead) can be represented by some other person or by Legal Representative. Maxim “actio personalis moritur-cum-persona” i.e. death of complainant does not terminate the criminal proceedings)

Q.39 What is the power and option of a criminal court when certain PWs whose names have been mentioned as such in the charge sheet, file affidavits stating therein that they do not want to depose in favour of the prosecution?

Ans. Only Public Prosecutor to decide and not the witness. An unwilling witness can be compelled to appear before the court and depose.

Q.40 What is the legal position when a complainant in a complaint case does not produce list of witnesses and does not pay for due postage for issue of process to the accused u/s 204 CrPC ?

Ans. Magistrate should pass order u/s 203 or 204 CrPC on the basis of evidence on record. Provisions u/s 204(2) and 204(4) are only directory.

- Q.41 What are the powers and options of a Magistrate in ordering summoning of a witness u/s 202 CrPC on the request of the complainant particularly when the complainant expresses his inability to make the necessary payment for issue of process to the witness ?**
- Ans. Magistrate should pass order u/s 203 or 204 CrPC and should not dismiss the complaint for non-compliance of directory provision of Section 204(4).
- Q.42 What are the options of a Magistrate when the process issued (in a complaint or state case) is not served by the police?**
- Ans. Magistrate should pass order u/s 203 or 204 CrPC on the basis of evidence on record. Provisions u/s 204(2) and 204(4) are only directory.
- Q.45 What are the powers and options of a Magistrate regarding disposal of F.R. when the complainant himself appears and states that he does not want to prosecute the accused and instead requests for accepting the F.R.?**
- Ans. Magistrate is not bound to accept the request of the informant/complainant. He has to pass order on the basis of material in the case diary.
- Q.46 What is the value of an affidavit of the complainant submitted to the IO at the time of disposal of F.R.?**
- Ans. Nil.
- Q.47 What is the law on the point of disposal of unclaimed property i.e. lawaris property in the custody of police?**
- Ans. Lawaris property should be released in favour of its true owner.
- Q.49 When and under what conditions a second complaint regarding the same offence can be filed before the Magistrate?**
- Ans. On discovery of better facts and evidence and also by new complainant.
- Q.50 What is the duty of a Magistrate when an accused with injuries allegedly having sustained from torture by police is produced for remand u/s 167 CrPC?**
- Ans. Magistrate can direct for medico legal examination of the injured accused. Can call for report from the police and the jail authorities. Can proceed u/s 176A CrPC.
- Q.51 Whether a Magistrate can order an accused to give his specimen signature or thumb impression for purposes of investigation?**
- Ans. Yes. Sec. 311-A CrPC.
- Q.54 Whether the bond money of the surety can still be realized when the accused has already appeared before the court?**
- Ans. Yes.
- Q.57 What is the extent of powers of criminal court while summoning an accused u/s 319 CrPC to face trial?**
- Ans. See Article on 319 CrPC.

- Q.59** What are the powers and procedure to be adopted by a Magistrate when a surety moves an application for being discharged particularly when the accused is lodged in jail in some other case or is absconding?
- Ans. Surety should be discharged under intimation to the accused or his counsel.
- Q.60** What is the law on the point of releasing cattles seized by police? How should the cost of preserving the cattles be assessed by the Magistrate and from whom it should be realized and to whom paid?
- Ans. See the relevant rules and guidelines issued in this regard by the State Govt.
- Q.61** What are the options in law of a Magistrate when some vehicle has been released by the Magistrate into the custody of a person who is subsequently found not to be entitled to the custody thereof?
- Ans. To issue notice to the person in whose custody the vehicle has been released. To direct the SHO to seize the vehicle and have custody of the same until further order of the Court. To decide the rival claims and objections and should pass fresh order without recalling the previous order of custody.
- Q.62** What are the options in law available to a Magistrate when the copy of the FIR registered at the police station is not received by the Magistrate within next 24 hours of the registration of the FIR?
- Ans. Should call for copy of the FIR from the P.S.. Magistrate may write to S.P. of the District. Sec. 91 CrPC can be invoked.
- Q.63** Whether a copy of the statement recorded by a Magistrate u/s 164 CrPC can be furnished to the IO or to the accused on his request?
- Ans. Copy of statement u/s 164 CrPC or case diary to accused only after cognizance of offence is taken: Right of an accused to claim copy of statement recorded u/s 164 CrPC and copy of case diary will arise only after cognizance of the offence is taken as contemplated u/s 207 and 208 CrPC. See: A Vs State of UP, (2020) 10 SCC 505 (Three-Judge Bench)
- Ans. Only to the IO and not to the accused prior to the stage of Sec. 207 CrPC.
- Q.64** Whether copy of dying declaration recorded by a Magistrate can be provided to the prosecution or the defence at their request? If yes, at what stage?
- Ans. At the stage of Sec. 207 and at any subsequent stage of proceedings of trial.
- Q.65** Whether demand of copy of prosecution papers u/s 207 of the CrPC can be pressed by the accused on late stages of the proceedings? If yes, under what conditions?
- Ans. Test of prejudice to accused for want of copy to be relevant.
- Q.67** Whether list of witnesses in a complaint case can be permitted to be produced by the complainant at late stages of the proceedings like the ones u/s 244, 246 CrPC or onward?
- Ans. Yes.
- Q.68** What would be the legal effect of a criminal case triable summarily when the same has been tried as warrant case?

Ans. Nil. But once a particular mode of trial is adopted, the procedure laid down for such trial must be adopted throughout. No procedure prescribed for any other mode of trial can be adopted subsequently or in the mid of the trial. See : Radhey Shyam Aggarwal vs. State NCT, Delhi, AIR 2009 SC 1712

Q.69 What are the legal options of a court when during the course of examination of a witness (whether chief or cross), the objection regarding relevancy of a question put to the witness is raised by the counsel for the other side?

Ans. Objection as to relevancy of question and answer given by the witness to such question should be recorded on the deposition sheet. Order should be deferred to be decided at the stage of judgment.

Q.70 What is the role of a trial Magistrate during examination of a witness when confusing and vague questions are put to the witness? What is the duty of trial Magistrate when the PP appears to be deliberately not putting a question to the witness on some material fact?

Ans. Magistrate can invoke his power u/s 165 Evidence Act. Can put question himself to the witness and may elicit the relevant information from the witness.

Q.71 What are the options of a Presiding Officer when a witness repeatedly attends the court but not examined or cross-examined by the party or his counsel/PP?

Ans. Speedy trial of the cases of under trial prisoners has also been declared by the Supreme Court as their fundamental right under Article 21 of the Constitution. See :

1. Vakil Prasad Singh vs. State of Bihar, (2009) 3 SCC 355
2. A.R. Antulay vs. R.S. Nayak, AIR 1992 SC 1701 (Seven Judge Constitution Bench)
1. Kadra Pehadiya vs. State of Bihar, AIR 1981 SC 939
2. Hussainara Khatoon vs. State of Bihar, AIR 1976 SC 1360

Protraction of criminal trials because of grant of frequent adjournments u/s309 CrPC by Judges and Magistrates has also been deprecated by the Supreme Court and directions for speedy trial of the cases of the accused or under trials has been issued in the following cases :

1. N.G. Dastane vs. Shrikant S. Shinde, AIR 2001 SC 2028
2. Swaran Singh vs. State of Punjab, 2000 (11) UP Cr. Rulings 1 (SC)
3. Ramon Services Pvt. Ltd. vs. Subhas Kapoor, JT 2000 (Suppl. 2) SC 546
4. Raj Bahadur vs. Commissioner, Agra Division, 2005 (4) AWC 3321 (All- D.B.)

However a Seven Judge Constitution Bench of the Supreme Court in the case of P. Ramachandra Rao vs. State of Karnataka, (2002) 4 SCC 578 has clarified that although speedy trial is a fundamental right of an accused/under trial but courts cannot prescribe any specific time limit for the conclusion of a criminal trial.

(B) Witness present in court not to be returned un-examined : Kindly see

1. State of UP vs. Shambhu Nath Singh, AIR 2001 SC 1403
2. Kadra pahadia vs. State of Bihar, AIR 1982 SC 1167
3. Hussainara Khatoon vs. State of Bihar, AIR 1979 SC 1360, 1369, 1377
4. Abdul Rehman Antuley vs. R.S. Nayak, AIR 1992 SC 1701
5. P. Ramachandra Rao vs. State of Karnataka, (2002) 4 SCC 578 (Seven Judge Constitution Bench)
6. Common Cause (First), (1996) 4 SCC 33
7. Common Cause (Second), (1996) 6 SCC 77

8. Raj Deo Sharma (Ist), (1998) 7 SCC 507
9. Raj Deo Sharma (2nd), (1999) 7 SCC 604
10. N.G. Dastane vs. Shrikant S. Shivde, AIR 2001 SC 2028
11. Swaran Singh vs. State of Punjab, 2000 (11) UP Cr. Rulings 1 (SC)
12. Ramon Services Pvt. Ltd. vs. Subhas Kapoor, JT 2000 (Suppl. 2) SC 546
13. Rais Ahmad vs. State of UP, AIR 1999 SC 3080
14. Raj Bahadur vs. Commissioner, Agra Division, 2005 (4) AWC 3321 (All) (DB)
15. Bal Krishna Pandey Vidur vs. State of UP, 2002 (1) JIC 332 (SC)

Q.72 Whether there is any law and/or judicial pronouncements on controlling the lengthy arguments by the Advocates?

- Ans. (A) **Time limit for arguments** : Or. 18, rule 2, sub-rule (3-D) CPC, as amended since 1.7.2002 provides that the court shall fix such time limits for the oral arguments by either of the parties in a case as it thinks fit.
- (B). **Written arguments** : The parties of their counsel may submit written argument concisely with the permission of the court u/o. 18, rule 2, sub-rule (3-A) CPC as amended w.e.f. 1.7.2002.
- (C). **No adjournment to be granted for filing written arguments** : As per the amended provisions of Or. 18, rule 2, sub-rule (3-C) CPC w.e.f. 1.7.2002, no adjournment shall be granted for the purposes of filing the written arguments unless the court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.
- (D). **No lengthy arguments** : (A) The Supreme Court and the Allahabad High Court has held that a counsel should not advance lengthy arguments so that precious time of court may not be wasted. See :
1. Gauri Shanker vs. DDC Allahabad, 2005 (4) AWC 3259 (All)
 2. LIC of India vs. Escorts Ltd., AIR 1986 SC 1370
- (E). **No sentimental arguments** : Sentimental arguments cannot be entertained. See : Gopal Singh vs. State Cadre Forest Officers' Association, AIR 2007 SC 1878

Q73. What are the relevant considerations and the laws regarding ascertaining rate of interest in civil suits?

Ans. kindly see :

- (A) Sec. 34 CPC
- (B) Sec. 3 and 4 of the Interest Act, 1978
- (C) Principles as provided u/s 34 CPC and Sec. 3 and 4 of the Interest Act, 1978 should be followed by the courts in awarding interest. In the absence of any agreement or statutory provision or mercantile usage, interest payable can be only at the market rate. Court of law can take judicial notice of both, inflation as also a fall in the bank rate of interest. Kindly see:
 - (i) Clarinet International Ltd. Vs. S.E.B.I., (2004) 8 SCC 524 (Three-Judge Bench)
 - (ii) Bijoy Kumar Dugar Vs. Bidyadhar Dutta, II (2006) ACC 36 (SC)
 - (iii) Kalyanpur Cold Storage, Kalyanpur Vs. Sohan Lal Bajpayee, AIR 1990 Allahabad 218 (DB)

Q74. What is the law and the duty of the criminal court when a witness moves an application in the court complaining therein regarding threats etc by the accused against recording depositions in the court?

Ans. (A) Cancellation of bail on the ground of threat to witnesses : - Bail granted to an accused u/s437/439 CrPC can be cancelled if the accused threatens the witnesses to turn hostile or tampers in any other manner with the evidence of the prosecution. See :

1. Panchanan Misra vs. Digambar Misra, AIR 2005 SC 1299
2. Mehboob Dawood Shaikh vs. State of Maharashtra, AIR 2004 SC 2890
3. Gurcharan Singh vs. State of Delhi Admn., AIR 1978 SC 179

Note: Relying upon the abovenoted Supreme Court rulings, a Division Bench judgment of Hon'ble Allahabad High Court delivered in Cr. Misc. Petition No. 5695/2006, Karan Singh vs. State of UP, decided on 12.4.2007 and circulated amongst the judicial officers of the State of UP, vide C.L. No. 6561/2007 Dated: April 21, 2007 directs the judicial officers to initiate process for cancellation of bail of such accused who threaten the PWs to turn hostile.

(B) Cancellation of bail on the basis of post bail conduct and/or supervening circumstances : - For cancellation of bail granted to an accused u/s437 or 439 CrPC, post bail conduct of the accused and supervening circumstances can also be taken into consideration. See : State Through CBI vs. Amarmani Tripathi, 2005 (53) ACC 484 (SC)

Q.75 What is the option of a civil court when a summons issued to a party or witness is received back with the report of the process server or postman to the effect that the addressee does not reside at the address mentioned in the summons or the address in the summons is false or incomplete? Whether publication of notice in news-paper can be ordered on the basis of such report?

Ans. No. See :

(A) Order 5, Rule 20 CPC r/w. Rule 141, G.R. (Civil)

(B) Publication of notice in news-paper or substituted service [O. 5. r. 20 CPC r/w. rule 141 G.R. (Civil)] : - The court cannot automatically grant the application for substituted service through publication in the news paper without taking steps for service by ordinary procedure as laid down u/o. 5, rules 9, 12, 15 & 17 CPC, it must be kept in view that substituted service has to be resorted as the last resort when the defendant cannot be served in the ordinary way and the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. See : Yallowwa vs. Shantavva, AIR 1997 SC 35

(C). Service through publication to be ordered only when all other modes are already resorted to and other methods of service have become impracticable [O. 5, rule 20 CPC & rule 141 G.R. (Civil)] : According to O. 5, rule 20 CPC and rule 141 of the G.R. (Civil), service of notice through publication in the news-paper can be resorted to only when all other modes of service have already been resorted to but the same have become impracticable. See :

1. Payal vs. Capt. Ashok Kumar Jindal, (1992) 3 SCC 116
2. Rai Prem Chandra vs. Obeetee Pvt. Ltd., 1991 AWC 238 (Alld) (DB)

Rule 141, G.R. Civil : Recourse to the mode of substituted service by publication in a newspaper shall be had only when service by any other method is considered impracticable. A careful discretion shall be exercised in selecting

the newspaper in which the publication is to be made under Order 5, rule 20, C.P.C. Only a daily newspaper circulating in the locality in which the defendant to be served is last known to have actually and voluntarily resided or carried on business or personally worked for gain, shall be selected. No summons or notice shall be published in a magazine.

- (D). **When the addressee does not read news-paper** : - Once a summons is published u/o 5, rule 20 CPC in news-paper having wide circulation in the locality, it does not lie in the mouth of the person sought to be served that he was not aware of such publication as he was not reading the said news-paper. See : Sunil Poddar vs. Union Bank of India, AIR 2008 SC 1006
- (E). **Publication of Notice in News paper : Personal Liability of Presiding Officer (Rule 141, G.R. Civil & C.L. No.2, dated 1.8.1907)** : Presiding officers of subordinate courts shall make every possible effort in the first instance to secure the personal service of summonses on parties and witnesses. When this method of service proves ineffectual and the court is satisfied, as required by Order 5, rules 19 and 20 (1) of the Civil Procedure Code (now Order. 5, rule 9 CPC) that the defendant is keeping out of the way for the purpose of avoiding service, substituted service by affixing a copy of the summonses in the court house and on the house of the defendant should be attempted. It is only when no other recourse remains that recourse should be had to service by means of notification in the press or the Gazette. The notification should appear in such publication as is most likely to fall into the hands of person to be served. It is, therefore, obvious that, except in a very few cases, notification published in the Gazette are valueless. With regard to the public press a careful discretion should be exercised in selecting the paper in which the publication is to be made. Such papers only should be chosen as are likely to be read by the person to be served, or by his friends. When courts are inspected the inspecting officer should examine cases in which substituted service has been effected and note how far these instructions have not been followed.
- (F) **Incomplete, false or fictitious registered address & the duty of court (O. 6, rule 14-A (5) & (8) CPC** : Where the registered address of a party is discovered by the court to be incomplete, false or fictitious, the court may, either on its own motion, or on the application of any party, order : -
- (a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or
 - (b) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

The court may direct the service of process at any other address, if for any reason, it thinks fit to do so.

Q.76 What is the stage of rejecting a plaint u/o. 7, Rule 11 CPC ?

Ans. A plaint can be rejected u/o. 7, Rule 11 CPC at any stage of the proceedings. It can be rejected even at the very outset of the proceedings i.e. even on the date of its presentation or at any stage thereafter. But if the court has once chosen not to reject the plaint at the initial stages of proceedings, it should then be left and deferred to be decided at the final stage i.e. during the judgment. Similarly if the controversy inviting the provisions of O.7, Rule 11 CPC appears to be a mixed questions of fact and evidence, the plaint should not be rejected at the initial stage of the proceeding but it

should be rejected only after the evidence of the parties is led thereon. If the facts contained in the pleading i.e. in the plaint are so clear that there is no absence of clarity or ambiguity in the application of O.7, Rule 11 CPC, only then the plaint should be rejected at the preliminary stages of the proceedings. See :

1. Thirumala Tirupati Devasthanan vs.Thallappaka Ananthacharyulu,(2003) 8 SCC 134
2. Murti Sri Sheoji Bhagwan vs.M/s. Hindalco, Renu Koot, Mirzapur, 1997 (30) ALR134
3. Vithalbhai (P) Ltd. Vs.Union Bank of India, (2005) 4 SCC 315
4. Samar Singh vs. Kedar Nath, 1987 Suppl.SCC 663
5. Narne Rama Murthy vs. Ravula Somasundaram, (2005) 6 SCC 614
6. Popat and Kotecha Property vs. State Bank of India Staff Assn., (2005) 7 SCC 510
7. Sopan Sukhdeo Sable vs.Asstt.Charity Commnr., (2004) 3SCC137
8. Saleem Bhai vs.State of Maharashtra, (2003) 1 SCC 557
9. ITC Ltd.Debt Recovery Appellate Tribunal,(1998) 2 SCC 70
10. T.Arivandandandan vs.T.V.Satyapal, (1977) 4 SCC 467
11. Rooplal Sathi vs. Nachhattar Singh Gill, (1982) 3 SCC 487
12. Rapta Kos Brett & Co. Ltd. Vs.Ganesh Property, (1998) 7 SCC184
13. Bruce vs.Odhams Press Ltd., (1936) 1 KB 697
14. M.Gurudas vs.Rasaranjan, (2006) 8 SCC 36

Q.77 Under what conditions an earlier order passed by court on merits can be recalled or reviewed?

- Ans.
- (A) Where the successor Munsif by going elaborately into evidence had reversed the order passed by his predecessor, it has been held that review of an order passed on merits of the case is not permissible u/s114 r/w. Order 47, rule 1 &2 CPC merely on the ground that the order is erroneous on merits.See : AIR 1986 1986 Cal 111
 - (B) It is settled position of law that any question of law or ruling that was not shown or raise when the matter was heard and decided on merits,cannot be raised in review petition u/o. 47, rule 1 &2 CPC.See : Dr.Rakesh Kumar Bajpai vs.State of UP, 1997 (15 LCD339 (All) (LB)
 - (C) Extent of power of review under order 47, Rule 1 &2 CPC : the nature of power of review u/o. 47, rule 1 & 2 CPC is not like inherent power it has been conferred by law either specifically or by implication. Power of review available u/o. 47, rule 1 &2 CPC cannot be used as means to achieve an advantage which is not otherwise available in law.See : Sudin R. Karve vs. State of Goa, 2002 (46) ALR 298 (SC)
 - (D) Review u/o.47, rule 1 &2 CPC is not possible on the ground that there was some mistake in judgment.See : Mohan Lal vs. Varanasi Vikas Pradhikaran, 2005 (33) AIC 143 (All)
 - (E) Review can be made on the ground of some mistake by court or even by an Advocate. Provisions u/s114 CPC r/w. O. 47, rule 1 & 2 CPC are wide enough to include a misconception of fact or law and even subsequent development are may also necessitate review. See : Board of Control for Cricket of India vs. Netaji Cricket Club, 2005 (2) AWC 1965 (SC)
 - (F) Power of review cannot be equated with the original hearing of the case. Power to review cannot be exercised as an alternative mode of appeal or to permit the parties another opportunity of hearing on merits . See :

1. Smt.Harjeet Kaur vs. ADJ, Lucknow, 2006 (62) ALR 826 (All) (LB)

2. Haridas vs. Usha Rani Bani, 2006 (4) SCC 78

Q.78 What are the options of court when it has by mistake passed some illegal orders prejudicial to either party?

Ans. If some mistake has been committed by court in passing some order which is prejudicial to either of the parties, the court is duty bound to rectify its mistake either upon the application of the party or even suo motu. But a mistaken order passed in favour of a party cannot be modified, rectified, recalled or set aside without giving an opportunity to that party to be heard. See :

1. Uday Shanker Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC--Three-Judge Bench)
2. Mudit Verma vs. Cooperative Tribunal, 2006 (63) ALR 208 (All) (LB)
3. Mayu Ram vs. CBI, (2006) 5 SCC 752
4. Kapra Majdoor Ekta Union vs. Management of Birla Cotton Mills Ltd., 2005 (2) AWC 1075 (SC--Three-Judge Bench)
5. Rajendra Singh vs. Upper Collector Administration, Aligarh, 2006 (5) ALJ 740 (All)

Q.79. What is the statutory period for filing W.S. by the defendant? Whether the initial period of 90 days as provided u/o 8, rule 1 CPC for filing W.S. can be extended further by the court? If yes, under what conditions?

Ans. Court is empowered to permit the defendant to file W.S. even beyond the period of 90 days as provided u/o. 8, rule 1 CPC provided there are sufficient reasons to satisfy the court that the defendant despite due diligence could not file the same within 90 days. See :

1. Kailash vs. Nanku, (2005) 4 SCC 480
2. Zolba vs. Keshao, 2008 Supreme 787 (SC)
3. Salem Advocates Bar Association vs. Union of India, (2005) 6 SCC 344 (Three-Judge Bench)
4. R.N. Zaidi vs. Subhash Chandra, (2007) 6 SCC 420
5. Rani Kusum vs. Kanchan Devi, (2005) 6 SCC 705
6. Shaikh Salim Hazi vs. Kumar, 2006 (1) ARC 334 (SC)

Q.80 What is the law on the point of time-frame for pronouncement of judgment in a civil case?

- Ans. (i) Kindly see O.20, rule 1 & 2 CPC
(ii) Anil Rai vs. State of Bihar, (2001) 7 SCC 318

Q.81 What should be the relevant considerations for grant or refusal of ex-parte injunction?

Ans. (A) Ex-parte injunction can be granted only under exceptional circumstances. The Supreme Court has enumerated following principles and factors which should weigh with the court for grant of ex-parte injunction : :

- (1) whether irreparable or serious mischief will ensue to the plaintiff;
- (2) whether the refusal of ex-parte injunction would involve greater injustice than the grant of it would involve;
- (3) the court will also consider the time at which the plaintiff first had notice of the act complained of so that the making of improper order against a party in his absence is prevented;
- (4) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex-parte injunction;

- (5) the court would expect a party applying for ex-parte injunction to show utmost good faith in making the application;
- (6) even if granted, the ex-parte injunction would be for a limited period of time;
- (7) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court. See :
 - 1. Bombay Dyeing & Manufacturing Co. Ltd. vs. Bombay Environmental Action Group, (2005) 5 SCC 61
 - 2. Morgan Stanley Mutual Fund vs. Kartickdas, (1994) 4 SCC 225
- (B) Ex-parte injunction cannot be granted unless Rule 3 of order 39 CPC is complied with. It is of utmost importance to note that an ex-parte order of injunction is an exception, the general rule being that order be passed only after hearing both the parties. It is only in rare cases where the court finds that object of granting injunction would be defeated by the delay, the court can issue an injunction ex-parte but that too only after recording reasons therefor. See :
 - 1. Shiv Kumar Chaddha vs. Municipal Corpn. of Delhi, (1993) 3 SCC 161
 - 2. Road Flying Carrier vs. The General Electric Company of India Ltd., AIR 1990 All 134 (D.B.)

Q.82 What material should be required from plaintiff at the stage of grant of ex-parte injunction?

Ans. For temporary injunctions u/o. 39, r. 1 & 2 CPC, plaintiff can prove the three ingredients, i.e. (1) Prima facie case, (2) Balance of convenience, and (3) irreparable injury on affidavits. The power given to courts to act on affidavits is not subject to the provisions of Order 19, r. 1 & 2 CPC. See : Satya Prakash vs. Ist ADJ, Etawah, AIR 2002 All 198

Q.83 What is the mode of disposal of an application seeking correction of amendment in an application moved u/o. 6, rule 17 CPC for amendment of pleadings?

Ans. In such matters the second application seeking rectification of mistakes or errors in the already moved amendment application u/o. 6, rule 17 CPC cannot be treated as a fresh application u/o. 6, rule 17 CPC. Such second application can be disposed of by the court under its inherent powers i.e. u/s151 CPC. If the mistake appears to be bonafide, the court should grant permission to correct the errors or mistakes that have appeared in the amendment application moved u/o. 6, rule 17 CPC which is pending for disposal. Kindly see : Smt. Leela Bhanott vs. Petro Lube India, a partnership firm, 2006 (64) ALR 403(Alld) (DB)

Q.84 Whether the proceedings of a civil suit wherein ex-parte judgment has already been reserved, can be re-opened upon the application of defendant or otherwise?

Ans. No. Once an ex-parte judgment is reserved in a suit, then only the judgment shall follow. Case cannot be re-opened or the ex-parte order cannot be recalled or defendant's application for setting aside the ex-parte order with permission to contest the case cannot be allowed for the reason that the same becomes non maintainable.

- 1. Bhanu Kumar Jain vs. Archana Kumar, 2005 (1) SCJ 243 (Three-Judge Bench)
- 2. Arjun Singh vs. Mohinder Kumar, AIR 1964 SC993
- 3. Vijay Kumr Madan vs. R.N. Gupta Technical Education Society, (2002) 5 SCC 30
- 4. Ramesh Chandra Ardawatiya vs. Anil Panjwani, (2003) 7 SCC 350

Q.85 Whether the facts or events of proceedings etc. having taken place in a court and recorded in its order sheets are conclusive or open to doubts or challenge?

Ans. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into arena. Judgments cannot be treated as mere counters in the game of litigations, facts recorded in the judgment/order by the judges as to what happened in the court during hearing or what concession was made by the party or his counsel during hearing and recorded in the judgment/order is conclusive and cannot be challenged before superior court. Statement of the Judges recorded in order-sheets/judgments cannot be allowed to be contradicted by statements at the Bar or by affidavit or by other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. If a party thinks that happening in court has wrongly been recorded in judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who had made the record. This is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to challenge thereafter by any other means.

Note: In these cases, certain statements, admissions, concessions, submissions were made, submissions not made before High Court and later on, withdrawn and contradicted before Supreme Court, which were rejected by the Supreme Court in aforesaid Rulings. See :

1. Guruvayoor Devaswom Managing Committee vs. C.K.Rajan, 2003 (7) SCC 546
2. Bhavnagar University vs. Palitana Sugar Mills (P) Ltd., (2003) 2 SCC 111
3. State of Maharashtra vs. Ramdas Shrinivas Nayak, (1982) 2 SCC 463
4. Jagvir Singh vs. State of Delhi Admin., AIR 2007 SC 2244
5. Central Bank of India vs. Vrajlal Kapurchand Gandhi, (2003) 6 SCC 573
6. Roop Kumar vs. Mohan Thedani, (2003) 6 SCC 595
7. Commissioner of Endowments vs. Vittal Rao, (2005) 4 SCC 120

Q.86 When can a court, instead of proceeding u/o 17, rule 2 CPC, proceed u/o 17, rule 3 CPC?

- Ans. (i) Where the defendant was factually present in court and had also filed application for adjournment Trial Court rightly proceeded u/o. 17, rule 3 CPC by rejecting the application and fixing the case after lunch of defendants' evidence which he refused to adduce. See : Ramjilal vs. XI ADJ, Meerut, 1997 (30) ALR 268 (All)
- (ii) O.17, rule 3 CPC : Party must be present or deemed to be present. See :
1. AIR 1970 All 257 (F.B.)
 2. AIR 1976 All 290 (313) (F.B.)
- (iii) Conduct of defendant--in seeking adjournment and reluctance at three times on date--shows that the defendant was interested in delaying the disposal of suit – suit rightly decided u/o. 17, rule 3 CPC. See : Smt. Surasati vs. Bechulal, 1997 (30) ALR93
- (iv) O. 17, rule 2 CPC does not apply unless the party has failed to appear at the hearing. O.17, Rule 3 applies where the party appears and is present and has committed the default referred to in the rule. See : AIR 1986 All 94 (D.B.)

Q.87 Under what conditions the opportunity to lead evidence of a party in a civil suit can be closed?

Ans. Where after repeated adjournments, the court had closed opportunity of evidence by rejecting the fresh adjournment application, it has been held by the Supreme Court that mere fact that adjournments were granted in the past is immaterial. Earlier adjournment granted cannot be reviewed on moving fresh adjournment application and

if there is sufficient ground, fresh adjournment can be granted to adduce evidence. See : State Bank of India vs. Chandra Govindji, (2000) 8 SCC 532

Q.88 What would be the effect of wrong-mentioning or non-mentioning of the relevant sections or provision of law under which an application is moved?

Ans. 1. Pradeep Ram Vs. State of Jharkhand, AIR 2019 SC 3193.
2. Jeet Manohar Singh vs. Harminder Singh, (2004) 6 SCC 26

Q.89 Whether Magistrate can take second time cognizance of some other offences against the same accused on same police report received u/s173(2) CrPC and against some new accused on the basis of the first or successive/additional police report submitted by the I.O. after further investigation u/s173(8) CrPC?

Ans. Yes. Case law is : Swil Ltd. vs. State of Delhi, (2001) 6 SCC 670

Q.90 Whether pronouncement of sentence on the date of conviction is compulsory or can be adjourned to some other date?

Ans. No. Sentencing can be adjourned. Case law : -
1. Gurdev Singh vs. State of Punjab, 2003 (47) ACC 601 (SC)
2. Motilal vs. State of M.P., (2004) 2 SCC 469

Q.91 (A) Which one of (i) Medication Examination Report and (ii) School Certificate of a victim/prosecutrix would be preferred in relation to deciding her age?

(B) Before which court-Magisterial or Sessions the application for deciding the age of the prosecutrix would lie after committal of the case?

Ans. (A) 1. Ram Dass vs. State of UP, 1989 A.Cr.R. 330 (All)
2. Jaya Mala vs. Home Secretary, AIR 1982 SC 1297
3. Ravinder Singh Gorkhi vs. State of UP, 2006 (55) ACC 814 (SC)
4. State of Chhatisgarh vs. Lekhram, (2006) SCC (Cr.) 66
(B) Sunderbhai Ambalal Desai vs. State of Gujarat, 2003 (1) JIC 615 (SC)

Q.92 Enquiry regarding relevant Circular Letter of Hon'ble High Court on "Allocation of Remand Duty to Judicial Magistrates Posted in Outlying Courts".

Ans. "C.L. No. 19/2006 Dated 10.5.2006".

Q.93 In a case where a register will is challenged, and it was atted by two attesting witness, now one of the witness has dies and other one is so ill that he cant be brought to the court, ultimately he wants produced in the court, rather scribe the advocate and sub registrar were produced as witness, they enough to prove the will, please enlighten.

Ans. In the regard the judgment passed in Bhorapor Singh vs. Shamsher Singh, 2009 (3) SCC 687, will be helpful.

Q.94 In a case of civil nature, the grandfather who is plaintiff has sought injunction against his son, daughter in law and minor grandson, who happens to be 17 yrs that the court should grant injunction against them on the ground that they are getting his minor son married against the provision of law, now I just want to know whether such suit is maintainable at first instance, second can the

injunction be granted in such matter, and thirdly does the grandfather has locus standi to file such suit (right to sue)?

Ans. Yes. Kindly see :

Sec. 5,6 & 12 of the Child Marriage Restraint Act, 1929 and order 32 CPC & Prohibition of Child Marriage Act, 2006.

Q.95 ¼1½ fdlh cPps dh iSf=drk fu/kkZfjr djus ds fy, Mh-,u-,- VsLV dh izkekf.kdrk dh D;k ,ohMsfUI;jh oSY;w gSA

¼2½ D;k U;k;ky; vkijkf/kd izdj.k esa bl IEcU/k esa Mh-,u-,- ijh{k.k ds nkSjku fopkj.k vkns'k ns Idrk gSA

Ans. (1) & (2) For determining the question of "paternity" and the evidentiary value of the report of D.N.A. Test, the officer is advised to read the judicial pronouncements on the subject noted below :-

1. Goutam Kundu vs. State of W.B., (1993) 3 SCC 418
2. Dukhtar Jahan (Smt.) vs. Mohammed Farooq, AIR 1987 SC
3. Bharti Raj vs. Sumesh Sachdeo, AIR 1986 All 259
4. Kanti Devi vs. Poshi Ram, (2001) 5 SCC 311
5. Banarsi Dass vs. Teeku Dutta (Mrs.), (2005) 4 SCC 449
6. Amarjit Kaur vs. harbhajan Singh, (2003) 10 SCC 228
7. Sharda vs. Dharampal, AIR 2003 SC 3450
8. Miss Renuka vs. Tammanna, AIR 2007 Karnataka 133
9. Sec. 164(2)(iii) CrPC as amended vide CrPC (Amendment) Act No. 25/2005 w.e.f. 23.6.2006 vide Notification No. S.O.923(E) dated 21.6.2006

Q.96 Law on how to compute 60/90 days period u/s167(2) CrPC, proviso, (a), (i) & (ii)?

Ans. Officer is advised to go through :

1. Chaganti Satyanarayana vs. State of H.P., AIR 1986 SC 2130
 2. State of M.P. vs. Rustam, 1995 SCC (Criminal) 830
 3. Tinnu vs. State of UP, 1999 AOR 201 (HC--All)
- Note: AOR= Allahabad Offence Reporter

Q.97 Whether Examination-in-chief can be recorded in court to prove a will or sale deed?

Ans. Yes. In appropriate cases court may permit examination-in-chief to be recorded in court. See : Salem Advocate bar Association vs. Union of India, (2005) 6 SCC 344

Q.98 In a criminal case wherein the chargesheet u/s498-A, 406 IPC has been sent to my court and the three accused have moved an application u/s239 CrPC for discharge on the flowing ground :

First two of the accused are of age group of 7 and 9 years old, and they have no role whatsoever in the commission of offence, i.e. demanding of dowry or mental or physical harassment or criminal breach of trust.

The third accused is a newly married lady who got married to the main accused's brother after the commencing of offence, i.e. she was never present at the time of offence, thus there is no chance of her role in the offence,

Is the aforesaid grounds enough to discharge the abovementioned accused? Please enlighten.

Ans. The officer is advised to go through Sec. 7 of the Juvenile Justice (Care & Protection of Children) Act, 2000 & Rule 77 (2) of the Juvenile Justice (Care & Protection of Children) Rules, 2007 which are being quoted below.....

(1) **Procedure to be followed by a Magistrate not empowered under the Act :**

“Sec. 7 : (1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceedings.

(2) The competent authority to which the proceeding is forwarded under subsection (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it.”

Rule 77(2) : In case of a juvenile is produced before a Magistrate not empowered under this Act, such Magistrate shall direct the case to be transferred to the Board for inquiry and disposal.

(2) **Material for framing charges :** At the time of framing of charges, the court can consider only the material placed before it by the investigating agency. While considering the question of discharge of accused u/s 227 CrPC or framing of charge u/s 228 CrPC, the court can consider only the material submitted to it by the magistrate at the time of commitment of the case to sessions u/s 209 CrPC Scope of S. 227, & 228 CrPC for court of sessions or S. 239 & 240 CrPC for magisterial courts is the same. At the stage of charge, trial court can consider only the police report referred to in S. 173 (2) CrPC and the documents sent there with. The only right the accused has at that stage is of being heard and nothing beyond that. Material produced by accused cannot be considered by court u/s 227 or 228 CrPC See :

1. Sachin Saxena alias Lucky vs. State of UP, 2008 (62) ACC 454 (Allahabad)
2. State of Orissa vs. Debendra Nath Padhi, 2005 (51) ACC 209 (Supreme Court-Three Judge Bench)
3. State Anti-Corruption Bureau, Hyderabad vs. Suryaprakasan, (1999) SCC (Criminal) 373.

Q.99 Where police after investigation found charges against a accused and deleted names of 3 or 4 accused and submitted charge sheet against 4 or 5. What should be done?

Ans. The Magistrate may take cognizance as per Sec. 190(1)(b) CrPC if he finds the evidence sufficient collected u/s 161 CrPC Action can be taken later on as per provisions of Sec. 319 CrPC

Q.100 (1) Whether injunction can be granted against a Hindu male marrying second wife during the lifetime of first wife?

(2) Whether the court is bound to defer the hearing and disposal of injunction application if the defendant raised objections regarding valuation of the suit and court-fee and insists disposal thereof before the disposal of injunction application?

Ans. (1) Officer is advised to go through the case law reported in Km. Kirti Sharma vs. Civil Judge (Senior Division), Etah, 2005 (2) AWC 1741 (All), where it has been ruled that general law in CPC i.e. Order 39, rule 1 & 2 CPC can be resorted to, even ex-parte, to restrain party from contracting or performing void act, i.e., second marriage as the Hindu Marriage Act, 1955, though a special statute, does not provide for grant of interim injunction.

(2) (A) Objection as to jurisdiction to be decided by the court as a preliminary issue would not prevent the court from passing interim orders while the decision on question of jurisdiction is pending if called for in the facts and circumstances of the case. Any violation of such interim order would be punishable u/o 39, R. 2-A CPC even if later on the court holds that it had no jurisdiction to entertain the suit. See : Tayabhai M. Bagasarwalla vs. Hind Rubber Industries Pvt. Ltd., (1997) 3 SCC 443.

(B) When there is challenge to jurisdiction, valuation or sufficiency of court fee or maintainability of suit, the court is to first decide these issues and then to decide the application for temporary injunction and other matters. See : Arun Kumar Tiwari vs. Smt. Deepa Sharma, 2006 (1) ARC 717 (Alld) (DB)

Q.101 Whether Limitation of 12 yrs. Begins from the date of judgment or date of signing of decree in execution proceedings?

Ans. Limitation will run from the date of judgment [See : (1999) 8 SCC 315]

Q.102 How court can safeguard the interest of a minor while issuing succession certificate in his favour?

Ans. With a view to protect the interest of a minor, while issuing succession certificate, court may order for Fixed Deposit Receipts in favour of minor in any nationalized bank of the amount mentioned in the certificate till his/her majority.

Q.103 A criminal case triable summarily has been tried as warrant triable case by Magistrate. Whether trial stands vitiated?

Ans. No. Provided no prejudice is shown to have been caused to the accused and proper opportunity to defend himself was given to the accused against the accusations leveled against him. See : Radhey Shyam Aggarwal vs. State NCT, Delhi, AIR 2009 SC 1712

Q.104 Whether NBW & process u/s82 & 83 CrPC can be issued simultaneously against an accused?

Ans. No. See : Devendra Singh Negi vs. State of UP, 1993 (30) ACC 455 (All) & Udai Bhan Karwaria vs. State of UP, 1997 ACC 361 (All)

Q.105 What are the relevant Rulings of Hon'ble Supreme Court & Allahabad High Court on Manner, Procedure & Power of Criminal Courts in relation to dealing with the evidence in cross-cases and connected cases?

Ans. Kindly see :

- (1) State of M.P. vs. Mishrilal, 2003 (46) ACC 881 (SC)
- (2) Nathulal vs. State of UP, 1990 (Suppl.) SCC 145
- (3) Mitthulal vs. State of M.P., AIR 1975 SC 149
- (4) Lewa; Losjpre vs/ Sirak Njam. AIR 1980 SC 1780
- (5) Km. Rinki vs. State of UP, 2008 (63) ACC 476 (Alld) (DB)
- (6) Harjinder Singh vs. State of Punjab, 1985 SCC (Cri) 93
- (7) Rajan Rai vs. State of Bihar, 2006 (54) ACC 15 (SC)
- (8) K.G. Premshanker vs. Inspector of Police, 2002 (45) ACC 920 (SC)
- (9) SPE Madras vs. K.V. Sundaravelu, AIR 1978 SC 1017
- (10) Karan Singh vs. State of M.P., AIR 1965 SC 1037

Q.106 Whether Probate can be issued in UP on will in relation to Hindu parties? What is the procedure & powers of court and the Ruling of Hon'ble Allahabad High Court on the subject?

Ans. If the parties are Hindus, no probate can be issued in UP on the basis of will-deed. Only succession certificate can be issued. See : Smt. Bimal Gaindhar vs. Uma Gaindhar, AIR 2004 All 329 & Dr. Sajjan Singh vs. Pushpraj Singh, 2007 (66) ALR 140 (All) (DB)

Q.107 What are the leading Supreme Court Cases regarding powers of Magistrate for disposing of Final Report submitted by I.O, after completion of investigation?

Ans. A Magistrate has got Four options in dealing with the Final Reports. Kindly see :

1. Bhagwant Singh vs. Commissioner of Police, AIR 1985 SC 1285
2. Sanjay Bansal vs. Jawahar Lal Vats, 2007 (59) ACC 1050 (SC)
3. Hemant Dhasmana vs. CBI, 2002 (1) JIC 31 (SC)
4. Minu Kumari vs. State of Bihar, 2006 AIR (Criminal) 355 (SC)

Q.108 Whether criminal power has been conferred on Civil Judges of Junior Division & Senior Division in the State of UP from every inception? If yes, then which is the relevant C.L.?

Ans. Yes. Criminal power has been conferred by Allahabad High Court on Civil Judges of Senior Division & Junior Division from the very beginning vide C.Ls. No. (i) 352/Admin/(A-3) Dated: Allahabad, August 12, 2002 and (ii) G.L. No. 10499/Admin.(A-3) Dated: Allahabad 03.8.2006.

Q.109 Whether “Parity” in bail orders is binding on other Judge even when earlier bail was granted by another Judge (u/s302, 120-B IPC) by ignoring the law of bails and the relevant material and considerations of grant or refusal of bail?

Ans.1 No. “Parity” in bail is not binding under the said circumstances on other Judges. Kindly see :

1. Bhagat Singh vs. State of UP, 2009 (66) ACC 859 (All)
2. Sabir Hussain vs. State of UP, 2000 CrLJ 863 (All)
3. Chander vs. State of UP, 1998 CrLJ 2374 (All)

Ans.2 **Negative equality cannot be claimed to perpetuate further illegality:** Even if a benefit was extended to some one in the past by mistake, similar benefit cannot be claimed by others subsequently. Negative equality cannot be claimed to perpetuate further illegality. See: **Pankjeshwar Sharma Vs State of J&K,(2021) 2SCC 188 (Three-Judge Bench)**

Q.110 Whether a non-compoundable offence can be permitted to be compounded in appeal preferred against the judgment & order of conviction recorded by Magistrate?

Ans. No. Sec. 320(9) CrPC is mandatory. Also see :

1. B.S. Joshi vs. State of Haryana, (2003) 4 SCC 675
2. Surendra Nath Mohanthy vs. State of Orissa, 1999 (38) ACC 942 (SC)
3. Karpuri Thakur vs. Baikunth Nath Dey, 1988 (25) ACC 106 (SC)

Q.111 What is the relevant C.L. & Supreme Court guidelines regarding child below six years in the lap of female under-trial prisoner?

Ans. See : C.L. No. 34/2006 Dated 07.8.2006 issued in compliance with the Supreme Court directions issued in “R.D. Upadhyay vs. Stae of A.P. & others, AIR 2006 SC 1946”.

Q.112 Whether the court is bound to grant bail to an accused on the basis of “Parity” in bail granted by the I/c Judges to co-accused?

Ans. No, subject to the law laid down in :

1. Bhagat Singh vs. State of UP, 2009 (66) ACC 859 (All)
2. Sabir Hussain vs. State of UP, 2000 CrLJ 863 (All)
3. Chander vs. State of UP, 1998 CrLJ 2374 (All)

Q.113 Whether an ex-parte temporary injunction which has already discontinued for want of extension, can be extended?

Ans. No. An interlocutory order which has already discontinued, cannot be extended. See : Ashok Kumar vs. State of Haryana, AIR 2007 SC 1411

Q.114 What is the extent of powers of civil court u/s152 CPC? Whether a new relief, not already granted in the decree, can be added or granted by court u/s152 CPC?

Ans. A new relief cannot be granted by court u/s152 CPC. For reply to the entire query, please see :

1. State of Punjab vs. Darshan Singh, (2004) 1 SCC 328
2. Bijay Kr. Sarogi vs. State of Jharkhand, (2005) 3 SCJ 796

Q.115 Whether W.S. can be taken on record beyond the period of 90 days as provided u/o. 8, r. 1 CPC? What are the Supreme Court Rulings on the subject?

Ans. Please see :

1. Salem Adv. Bar Assn. vs. Union of India, (2005) 4 SCC 480
2. Zolba vs. Keshao, 2008 Supreme 787 (SC)
3. R.N. Zaidi vs. Subhash Chandra, (2007) 6 SCC 420

Q.116 what are the options of a Magistrate in a complaint case when the complainant does not turn up after summoning of the accused?

Ans. Please see :

1. Sec. 249, 256 CrPC
2. Bala Sahab K. Thackeray vs. Venkat alias Babru, 2006 (65) ACC 1016 (SC)
3. (Smt.) Saroj Gupta vs. State of UP, 2006 (54) ACC 431 (All)

Q.117 Whether awarding of sentence of imprisonment and/or fine is must before granting benefit of probation to a convict?

Ans. No. Order of sentence and benefit of “Probation” cannot run together. Fine and sentence in lieu of fine can also not be awarded for extending benefit of probation. See :

1. State of UP vs. Dev Dutt Sharma, 1984 ALJ 1229 (All) (DB)
2. Shiv Singh vs. State of UP, 1989 ALJ 515 (All)

Q.118 Can interim injunction be granted in a suit for recovery of possession only?

Ans. No. See :

1. Or. 39, r. 2(2), proviso, UP Amendments, clause (a) CPC
2. V.D. Tripathi vs. V.S. Dwivedi, AIR 1976 All 97
3. Rajendra Tewary vs. Basudeo Prasad, 2002 (46) ALR 222 (SC)

Q.119 Can a plaintiff whose name is recorded as tenure holder in the revenue records seek injunction from civil court in respect of agricultural land?

Ans. Yes. See :

1. Kamla Shankar vs. III ADJ, Mirzapur, 1998 (89) R.D. 484 (All)
2. Deokinandan vs. Surajpal, 1996 ALJ 144 (SC)

3. Tej Bhan Singh vs. II ADJ, Jaunpur, 1995 ALJ 109 (All)
4. Parsottam vs. Narottam, 1970 ALJ 505 (All) (DB)

Q.120 What is the stage of raising plea of sanction u/s197 CrPC?

Ans. Plea of sanction u/s197 CrPC can be raised at any time after cognizance of the offence is taken, even at the stage of conclusion of trial or after conviction. But this plea is not available to an accused against the registration of FIR, investigation, arrest, submission of police report u/s173(2) CrPC or remand of accused u/s167 CrPC
Rulings are :

1. P.K. Pradhan vs. State of Sikkim, (2001) 6 SCC 704
2. State of Karnataka vs. pastor P. Raju, AIR 2006 SC 2825

Q.121 Civil suit pending : T.I. (status quo) already granted by trial court but proceedings of suit are stayed by High Court--Defendant breaching T.I. by erecting constructions--Plaintiff applying for police aid for ensuring implementation of T.I.--Whether trial court has powers to pass order directing the police to ensure that the T.I. is not disobeyed by the defendant?

Ans. Yes. See :

1. Or. 39, rule 2-A CPC
2. Sec. 151 CPC
3. Rameshwar vs. V ADJ, Basti, 1999 ALJ 22 (All)
4. Indian Bank vs. Maharashtra Co-operative Marketing Federation Ltd., AIR 1998 SC 1952
5. Smt. Jagannathiya vs. State of UP, 2006 (64) ALR 330 (All) (DB)

Q.122 What are the legal consequences of not quoting Rulings of the Supreme Court and High court in judgments and orders?

Ans. Please see :

1. Rule 6, G.R. (Civil)
2. C.L. No. 18/1999 dated 19.8.1999
3. Jaswant Singh vs. Smt. Sobha Agarwal, 2002 (47) ALR 543 (All)
4. State of Orissa vs. Sukru Gouda, AIR 2009 SC 1019

Q.123 Initially application to S.P. was made with the allegations of dacoity by five accused in the house of complainant--But the same was registered as NCR for offences u/s323, 504, 506 IPC--after investigation charge-sheet for offences u/s323, 452, 506 IPC was filed--Charges by Magistrate framed under those sections--Now three PWs (victims of the offence) have deposed and supported their initial version of dacoity--Whether the case can be committed by Magistrate to sessions for trial.

Ans. Please see Sec. 323 CrPC for passing appropriate order in the light of evidence available on record.

Q.124 Suit for cancellation of sale-deed involving agricultural land--whether court fees is payable on the basis of "land revenue" or "consideration" mentioned in the sale-deed or "ad valorem value"?

Ans. "Suit involving cancellation of agricultural land--valuation for purposes of payment of C.F. is ten times the land revenue and for purposes of jurisdiction, it is thirty times the land revenue". See : Lalmani vs. Sheetla Prasad, 1968 All.W.R. 501 (All)

Q.125 Whether obtaining signature of an accused/maker of statement is necessary on his statement u/s164 CrPC?

- Ans. 1. For confessional statement u/s164 CrPC see Sec. 164(4) CrPC
2. Dhananjaya Reddy vs. State of Karnataka, (2001) 4 SCC 9

Q.126 Can criminal history of an accused (case diary revealing involvement in 18 crimes of graver nature) be taken into consideration for disposal of the Bail Application?

- Ans. Yes. Criminal history of an accused is relevant for disposal of an application for Bail.
See :
1. Brij nandan Jaiswal vs. Munna Jaiswal, AIR 2009 SC 1021
2. Surendra singh vs. State of UP, 2008 CrLJ (NOC) 924 (All)
3. Sompal Singh vs. Sunil Rathi, 2005 (1) SCJ 107

Q.127 Can a plaintiff/co-sharer seek interim injunction against his co-sharer of undivided property against interference into possession?

- Ans. See :
1. Jahar Singh vs. Board of Revenue, 2005 (3) AWC 2877 (All)
2. Ajai Pal Singh vs. Shitla Bux Singh, 2005 (2) AWC 2001 (All--F.B.)

Q.128 Suit has proceeded ex-parte--plaintiff has filed only Photostat copies of sale-deed and other documents as proof of his title in the disputed property--whether such injunction suit can be decreed ex-parte?

- Ans. For duty of court while delivering judgment ex-parte, please see :
1. Commissioner of Income Tax vs. Surendra Singh Pahwa, AIR 1995 All 259
2. Smt. Indra Sharma vs. Lt. Col. S.K. Sharma, 2005 (4) AWC 3122 (All)
3. Balraj Taneja vs. Sunil Madan, 1999 (4) AWC 2(129) NOC (SC)

Q.129 Whether interim injunction can be granted in favour of plaintiff whose name is not recorded as tenure holder over the agricultural land and who claims that the land was 'handed over' to him/her by it's Bhumidhar?

- Ans. No. Kindly see :
1. Kamla Shankar vs. IIIrd ADJ, Mirzapur, 1998(89) R.D. 484 (All)
2. Magan Lal Chaturvedi vs. District Judge, Mathura, 1998 ALJ 2323 (All)
3. Deokinandan vs. Surajpal, 1996 ALJ 144 (SC)
4. Tej Bhan Singh vs. II ADJ, Jaunpur, 1995 ALJ 109 (All)
5. Parsottam vs. Narottam, 1970 ALJ 505 (All) (DB)
6. Surya Narain Pandey vs. Addl. Civil Judge, Gyanpur, 1995 R.D. (H) 50 (All)
7. Jyoti Ram vs. District Judge, Saharanpur, 1995 RD 99 (All)
8. Indra Pal vs. Jagannath, 1993 ALJ 235 (All)
9. Jai Singh vs. Hanumant Singh, 1979 ALJ 645 (All)
10. Kishori Lal vs. Shambhoo Nath, 1978 ALJ 1273 (All)
11. Bhagwat Prasad vs. Jitendra Narain, 1991 ALJ 971 (All)

Q.130 Accused has been charge-sheeted for offences under SC/ST (Prevention of Atrocities) Act, 1989 and also for sessions triable offences--Accused moving application for discharging him of the aforesaid offences--What are the powers and options of Magistrate?

- Ans. Please See : Sec. 209 CrPC &
1. Sarabjit Rick Singh vs. Union of India, 2008 (61) ACC 1003 (SC)
2. Sanjay Gandhi vs. Union of India, AIR 1978 SC 514
3. Rai Sahab Yadav vs. State of UP, 2006 (55) ACC 756 (All)

4. Ganga Lal Ashok vs. State of A.P., AIR 2000 SC 740
5. State of H.P. vs. Gita Ram, AIR 2000 SC 2940
6. Sec. 239, 240, 227, 228 CrPC

Q.131 What is the law on ‘admissibility of a Photostat copy in evidence?’

Ans. Please see :

1. Sec. 63, 65, 66 Evidence Act
2. Ashok Dulichand vs. Madhava Lal, AIR 1975 SC 1748

Q.132 Whether interim injunction can be granted in favour of the plaintiff if the disputed immovable property is not clearly identifiable?

Ans. No. See :

1. Order 7, rule 3 and Order, 20, r. 9 CPC
2. Smt. Phoolmati Devi vs. Maniklal, 2005 (2) AWC 1823 (All) (LB)

Q.133 Magistrate while granting application u/s156(3) CrPC, directing only ‘investigation’ and not ‘registration’ of FIR--what legal consequences do follow out of such order?

Ans. Kindly see : Suresh Chand Jain vs. State of M.P., 2001 (1) Supreme 129

Q.134 Whether prisoners have right to ask to go out of jail to vote?

Ans. No. Please see :

1. Shekhar Tiwari vs. State of UP, AIR 2009 (NOC) 2863 (All) (DB)
2. K. Anandan Nambiar vs. Chief Secretary, Govt. of Madras, AIR 1966 SC 657
3. Anukul Chandra Pradhan vs. Union of India, AIR 1997 SC 2814 (Three-Judge Bench)

Q.135 Application u/s156(3) CrPC moved for registration of FIR & investigation--offences (alleged) relate to embezzlement/criminal breach of trust by public servants : Whether prior sanction u/s197 CrPC is required at the stage of hearing and dispose of the application u/s156(3) CrPC?

Ans. No. Please see : State of Karnataka vs. Pastor P. Raju, AIR 2006 SC 2825

Q.136 A replication filed by plaintiff is available on record of the suit but there is no order of the court for it’s being taken on record--Defendant is objecting to it’s being taken on record--What is the legal position on this?

Ans. Please see :

1. Sec. 142 CPC
2. Order 8, Rule 9 CPC (as amended w.e.f. 1.7.2002)
3. Bir Singh vs. Kishan Chand, AIR 2007 HP 24

Q.137 An application u/s482 CrPC has been filed before the Hon’ble High Court praying for stay of the order passed by Magistrate u/s125 CrPC--Petition is still pending and no stay order has yet been passed by High Court--Husband/petitioner has moved an application before the Magistrate with the prayer not to execute and give effect to the order for payment of maintenance--What is the power of the Magistrate with regard to staying the proceedings towards realization of the amount of the maintenance?

Ans. Magistrate cannot keep the proceedings stayed unless stay order is passed and conveyed by the High Court. Please see :

1. C.L. No. 50/1993 dated 6.9.1993

2. C.L. No. 6/1995, dated 8.2.1995
3. Assistant Collector vs. Dunlop India Ltd., AIR 1985 SC 330
4. The National Textiles Corp. vs. Swadesh Cotton Mills Co. Ltd., 1987 ALJ 1266 (Alld) (DB)
5. Road Flying Carrier vs. The General Electric Co., AIR 1990 All 134

Q.138 Whether certified copy of Evidence of accused given u/s164 CrPC can be provided to Investigating Officer (I.O.)?

Ans. Yes. State of Madras vs. G. Krishnan, AIR 1961 (Mad.) 92 (F.B.)

Q.139 What are the laws regarding prohibition against disclosure of name of victim of sexual offences in judgments & orders?

Ans. (A) Please see Sec. 228-A IPC reads as under :

“Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence u/s376, Sec. 376-A, Sec. 376-B. Sec. 376-C, or Sec. 376-D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.” Cases on the subject are : -

1. Premiya vs. State of Rajasthan, 2008 (63) ACC 94 (SC)
2. Om Prakash vs. State of UP, 2006 (55) ACC 556 (SC)
3. State of Karnataka vs. Puttaraja, (2004) 1 SCC 475
4. State of H.P. vs. Shree Kant Shekari, (2004) 8 SCC 153
5. Bhupinder Sharma vs. State of H.P., (2003) 8 SCC 551

(B) It has been held by the Supreme Court that disclosure of the name of the woman/victim of a sexual offence by not observing the restrictions u/s228-A IPC and the repeated judicial pronouncements thereon amounts to judicial indiscipline. See : State of Orissa vs. Sukru Gouda, AIR 2009 SC 1019

Q.140 Whether a suit can be dismissed for non-payment of cost by plaintiff within time allowed?

Ans. No. Please see :

1. Sec. 35-B CPC
2. Manohar Singh vs. D.S. Sharma, 2009 (7) Supreme 357

Q.141 Whether statement u/s164 CrPC of an accused or witness or of any other person can be recorded upon the application of an applicant other than I.O.?

Ans. Only I.O. can move application to the Magistrate for recording of statement of an accused or witness u/s164 CrPC Kindly see : Jogendra Nahak vs. State of Orissa, 1999 (4) Crimes 12 (SC)

Q.142 What is the mode of realization of cost awarded by court under some order other than decree/judgment?

Ans. Please see Sec. 36 CPC.

Q.143 When does a legal day commence and when complete?

Ans. The day of birth of a person must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day. Legal day commences at 12 O' Clock midnight and continues until the same hour the following night. See : Erati Laxman vs. State of A.P., (2009) 2 SCC (Criminal) 15

Q.144 What matters can be considered as ‘urgent’ for the purpose of putting before the link/In-Charge Officer in district civil and criminal courts?

Ans. Proceedings/matters which do not amount to progress towards different stages of trial.

Q.145 Can a link/In-Charge Officer (not being CJM) release a property confiscated under economic offences when notified ACJM Ist court is vacant?

Ans. No.

Q.146 Can a survey commission report be confirmed subject to evidence?

Ans. No. A survey commission report can be either finally accepted/confirmed or finally rejected.
