

Obstacles In Trial Proceedings In Criminal Courts

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Two different versions of the same incident resulting into two criminal cases are described as “case and counter case” by some High Courts or just “cross cases” by some others. Incidences of Cross cases are very common in trial courts. Almost in every serious criminal case we find a cross version by the Defence which requires a separate trial on its own right. Sometimes the cross version represents the truth, in most cases they are false and raised just to impede speedy trial and to defeat the prosecution and secure acquittal by making the trial complicated and confusing. This may be criticized on the ground that the established principles of criminal jurisprudence are being given a go-by inasmuch as evidence recorded in one case is being used in another case as also the rule of proof in criminal cases is not being strictly followed. But a closer look would reveal that the criticism has no force. If parties are different and the evidence is not being recorded in the presence of the other party against whom it is going to be used then one can legitimately say that such type of evidence should not be used. But if the rival parties have different versions and in presence of both the parties evidence is being recorded, then perhaps there cannot be any grievance on this count. It may also be argued that only the procedure prescribed by the apex court and various High Courts can guarantee compliance with the fundamental norms of a fair criminal trial including the protection given to the accused in Article 20, 21 and 22 of the Constitution.

Postponement and Seizing Proceedings :

Once the Magistrate take cognizance, he proceeds further and such proceeding continues till final order or judgment as the case may be, but in some cases or under some circumstances the proceeding are either postponed or closed.

Following are such circumstances –

Death of the Accused During Trial : During trial if the accused dies trial abates, file is closed, such provision is not laid down for trial any where specially. Every appeal by the State or Central Government under Section 377 (against inadequacy of the sentence) or under Section 378 (against acquittal) shall finally abate on the death of the accused. In such appeals, the accused will invariably be the respondent.

Death of the Accused During Appeal (Section 394) : The general rule is that when appeal is against conviction and accused dies during the course of appeal such appeal abates. But appeal does not abate if –

- (i) Punishment of fine has been imposed by lower court as fine is to be recovered from property of deceased.
- (ii) The legal representative of deceased apply within 30 days of death appeal shall not abate.

Accused of Unsound Mind (Section 328 to 339): If the court comes to know that the accused is of unsound mind and is unable to defend himself then following steps are taken. These are as follows-

- (i) Medical examination of the accused by registered Medical practitioner (Section 328)

If female, will be done by female medical officer.
- (ii) Report of medical practitioner.
- (iii) Satisfaction of the Court that he is unable to defend himself.
- (iv) Direction for his or her treatment, on custody and the proceeding shall be postponed against him. (Section 330)
- (v) When he becomes of sound mind. He shall be produced before the court and proceeding starts further. (Section 332)

If it is proved that he was of unsound mind at the time of doing the act and was unable to understand the nature and consequences of his act, there is no question of criminal liability against him. He shall be acquitted by the court.

Simultaneous FIR and Complaint (Section 210) : When FIR is lodged under Section 154 and complaint is also made to the Magistrate under Section 190 read with 200 and the Magistrate comes to know about recording of First Information Report. It is appropriate for the Magistrate to postpone the proceedings till the police report under Section 173 is produced before the Magistrate.

Compounding of Offences: Section 320 indicates that when offence is compoundable by parties to proceedings then the compromise is reached and proceedings abate. Clause (1) of Section 320 provides a list of those offences which may be compounded without sanction or permission of the Court.

But if challan has been produced before the Court or the Court has taken cognizance then it can be compounded only with the permission of the Court.

Clause (2) of Section 320 provides a list of those offences which may be compounded with the permission of the Court.

No offence can be compounded except those which are provided by clause (1) and (2) of Section 320 of the Criminal Procedure Code.

The right of compounding is available only to the aggrieved person (Victim) against whom offence has been committed. But (A) when the aggrieved party dies the offence can be compounded by his legal representative.(B) If aggrieved party is disabled person then such offence may be compounded by his guardian, who is competent to enter into contract on his behalf.

An offence may be compounded during the course of appeal but with the permission of the Court. An offence may be compounded during the course of revision but only with the sanction of the Court.

Withdrawal From Prosecution : (Section 321): When a crime is committed, State takes action and also has power to withdraw prosecution at any stage. The public prosecutor in charge of case may withdraw the prosecution against any of the accused.

Power to withdraw from prosecution is not personal power of prosecutor. He is simply a representative of the State in criminal case and he is required to act according to the directions given by the State or Central Government as the case may be. It really means that public prosecutor can withdraw, only when directed by proper authority/government to do so.

But such withdrawal is possible only when the Court permits it. The Court may or may not permit withdrawal. The power is required to be exercised in the interest of justice.

Pardon to the Accused : Articles 72 and 161 of the Constitution of India provide pardoning power to the president and the Governor.

Limitation : (Sections 467 to 473):

- (i) The Code of Criminal Procedure of 1898 did not contain any provision relating to limitation. It has been incorporated for the first time by present the Code in 1973.
- (ii) The basic principle of law of limitation in criminal cases is that the Court shall not take cognizance of an offence if police report or complaint is made after the expiry of the prescribed period of limitation.
- (iii) What is the period of limitation?

Following are the rules relating to period of limitation :-

- (a) When offence is punishable with fine only the period of limitation is six months.

- (b) When offence is punishable with imprisonment upto one year, the period of limitation is one year.
 - (c) If offence is punishable with imprisonment upto three year, the period of limitation is three years.
 - (d) If offence is punishable with imprisonment of more then three years or life imprisonment or death there is no period of limitation.
 - (e) When a person is accused of two or more offences then the period of limitation shall be counted on the basis of that offence which is punishable with more punishment.
 - (f) Economic offences (Inapplicability of Limitation) Act, 1974 prescribes a list of those legislations in relation to which there shall be not period of limitation.¹
- (iv) When the period of limitation commence (Section 469)

The period of limitation in criminal cases start from the date when-

- (a) The offence was committed or
 - (b) When information of offence was received or
 - (c) When the offender was identified.
- (v) Following are the rules relating to counting of period of limitation:-
- (a) The first day is excluded. (Section 469)
 - (b) When the last day when the period of limitation expires, the Court is closed or does not function, then the period of

¹ See the list of enactments provided in the Act

limitation extends upto the day when the Court re-opens.
(Section 471).

(c) The following period is not included when period of limitation is counted. (Section 470)

- (1) If criminal proceedings are pending against the accused in any other Court, the period of such proceedings is not to be counted. (proceeding for same offence).
- (2) If proceedings of Court have been stayed by any Court or authority, such period is not to be counted.
- (3) If the accused has gone out of India, the period for which he remains out of India, is not to be counted.
- (4) If sanction or permission of appropriate government is required for initiation of prosecution, the period taken for obtaining such permission or sanction is not to be counted.
- (5) Continuing offences – In continuing offences the limitation period shall start every moment. In other words no limitation. (Section 472)
- (6) Discretionary power of Court – In spite of the fact that the prescribed period of limitation on has expired, the Court may in the interest of justice take cognizance of any offence. (Section 473).

Protection from Double Jeopardy:- (Section 300 and Article 20(2)): The principle of natural justice is that one can be punished once only for an offence committed by him and not more than that. Provisions in this relation are contained in Section 300 of the Criminal Procedure Code read with Article 20 clause (2) of the Constitution of India.

No one can be punished twice for the same offence.

Latin maxim applied in this relation is *memoria debet bis vexari*

When plea or defence is raised under Section 300 of this Code, it is known as *autrefois acquit* or *autrefois convict*.

The rule in clause (2) of Article 20 is that no person shall be prosecuted and punished twice for the same offence i.e. more than once.

Two or More Charges (Section 224): When there are two or more charges against the accused out of which one or more are not provided. The offences which are not proved during course of trial, the court shall record acquittal of the accused and such charge or charges shall be presumed to be withdrawn. (Section 224 of the Code of Criminal Procedure)

Transfer of Cases : (Under Section 91): When a case is being tried by Court and such case is transferred to other Court, then the first Court stops proceedings, it happens in the following cases-

When cognizance is taken by the Magistrate *suo moto*, it is the duty of the Magistrate to ask the accused that if he so desires his case may be transferred to some other Court. If the accused desires, then such case shall be transferred to other Court as per the direction given by Chief Judicial Magistrate. (Section 191)

The Chief Judicial Magistrate may also transfer cases. (Section 192)

Section 402 – Power of High Court to withdraw or transfer revision cases.

Under Section 406, the Supreme Court may also transfer cases. Such application is filed by the Attorney General of India or Advocate General of State that in the interest of justice case be transferred from one High Court to another, or from one Criminal Court to another Criminal High Court of another State and decided the case itself.

Under Section 407 the High Court may transfer cases from one Court to another within its jurisdiction.

The High Court enjoys special power to call for the record and try the case. This is known as extra ordinary original criminal jurisdiction of the High Court. When in the exercise of this jurisdiction the High Court tries a case, the High Court is required to follow the same procedure which is applicable to case.

Under Section 409 Sessions Court enjoys this power. Section 411 withdrawal of cases by Executive Magistrate.

Writ of Prohibition: Under Article 32 of the Supreme Court has power to issue writs for fundamental rights and under Article 226 the High Court has power to issue writs for fundamental rights or any other rights. Habeas corpus, Quo warranto, Mandamus, Certiorari, Prohibition are the writs.

The writ of prohibition is issued against subordinate Court committing some irregularity in a proceeding. The purpose of this writ is to stop the proceedings and to correct the mistake committed by the Court.

Reference : When reference is made to the High Court under Section 395 of the Code, the Court of Magistrate making reference stops the proceeding, or postpones the proceedings. Such proceedings are resorted only when directions are issued by the High Court determining the legality of law in question.

Reference to High Court, Disposal of case according to decision of High Court and Calling for records to exercise powers of revision are defined under Section 395, 396 and 397 of the Criminal Procedure Code, 1973. Provisions under these sections are:

Section 395 of the Criminal Procedure Code "Reference to High Court"

Section 396 of the Criminal Procedure Code "Disposal of case according to decision of High Court"

Section 397 of the Criminal Procedure Code "Calling for records to exercise powers of revision"

Revision: In criminal cases both Sessions Court and the High Court enjoy this power. When during the course of trial any order is passed by Magistrate or Court, against which no appeal is available, and revision application is filed either under Section 399 or Section 401, the proceedings are postponed till the disposal of such revision application. The word "revision" has not been defined in the Criminal Procedure Code however, as per Section 397 of the Criminal Procedure Code, the High Court or any Sessions Judge have been empowered to call for and examine the records of any proceeding satisfy oneself as to the correctness, legality, or propriety of any finding, sentence or order, whether recorded or passed, and as to the regularity of any proceedings of an inferior court.

Discharge : (Section 227): If the Session Court is not satisfied and finds that there is no prima facie case against the accused, he is discharged. The Court shall not prepare charges against the accused and he shall be discharged.

Absence of the Complainant (Section 256): When on the date of hearing, the complainant himself is not present, complaint may be rejected or dismissed and accused shall be acquitted. If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

Withdrawal of Complaint : If the complainant withdraws his complaint under Section 257, the accused shall be acquitted and proceedings obviously stop. If a complainant, at any time before a final order is passed in any case under this Chapter,

satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

Stop Proceedings (Section 258) : The magistrate may on any ground which he thinks fit, stop the proceedings in the matter with the permission of the Chief Judicial Magistrate or Magistrate under whom he functions and the accused may be acquitted. In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case release, the accused, and such release shall have the effect of discharge.

Pre-requests for Proceedings : The examination of Sections 194 to 198 points out that in some matters or cases Court may proceed only when consent or sanction of any person or officer is obtained.

Conclusion:

Fair trial requires that the accused should not be compelled to disclose his case before the entire case of the prosecution is out and that the right of accused to keep silent throughout the trial should not be compromised. The argument is that if both cases would be consolidated and evidence is recorded in one case the status of the accused vis a vis a fair criminal trial would be compromised and protection given to an accused would melt down. True, if the cases are 'consolidated' as we understand the term in civil jurisdiction, many aspects of fair criminal trial as we recognize them would vanish. But that is the demand of situation which arises because of peculiar character of a cross case. As regards premature disclosure of Defence case, in cross cases the accused come up with disclosure of his case right from the very beginning of the case. So the argument that the accused would be compelled to disclose his defence before the prosecution case is out, loses vigour. The requirement is that the

accused shall not be compelled to disclose his version, but, if he has already made his Defence version known to the whole world voluntarily how can it be said that he is being compelled to disclose his case before the evidence of prosecution is over?

Rights of an accused vis a vis a fair criminal trial must be respected, but, at the same time, we should not be hyper technical and far away from realities. The criticism that consolidation of cross cases would compromise with the concept of fair criminal trial is more imaginary than real. Fairness demands that cross cases should be tried as one case.