

CODE OF CRIMINAL PROCEDURE, 1973

Punjab: DÄn section 11, after sub-section insert the föllqwing sub-section, namely:— "(IA) The State Government may likewise establish as many Courls of Judicial Magistrate of the first class in respect to particular cases or to particular classes of eases, or in regard to cases generally, in any local area. Vide Punjab Act 9 of 1978, sec. 2 (w.e.f. 14-4-1978).1 Section 29A Punjab: section 29, insert the following section, namely:— '29A. Sentence which Executive Magistrate may pass.—An Executive Magistrate. pass a sentence of imprisonment of a term not exceeding three years or of tfine not exceeding five thousand rupees, or both." Wide Punjab Act 22 of 1983 (w.e.f. 27-6-1983).J Tho Cnurt of a IVIae Orissa Act 11 ot — unjab: In Section 167, in sub-section (2), for the wordö"fifteen days" at both the places ere they occur, substitute the words "thirty days". [Vide Punjab Act 9 of 1986, sec. 2 (w.e.f. 8-4-1986).] - exniD1ts relate

CHAPTER XIV CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS 190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence— (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try. STATE AMENDMENT Section 190A 'Punjab and Union Territory of Chandigarh: After section 190, insert the following section, namely:— 0190A. Cognizance of offences by Executive Magistrate.—Subject to the provisions Of this Chapter any Executive Magistrate may take cognizance of any specified offence— Scanned hv Cam.Scanne The Code of Criminal Procedure, 1973 135 upon receiving a complaint of facts which constitutes such offence: (b) upon a police report of such facts: (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has beenecommitted. [Vide Punjab Act 22 of 1983, sec. 6 (w.e.f. 27-6-1983).] COMMENTS The Magistrate can ignore the conclusion arrived at by the 1.0. and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit and exercise his power under section 190(1)(b). The Magistrate is not bound in such situation to follow the procedure laid down in sections 200 and 202 of the Code for taking cognizance of a case under section 190(I)(a) though it is open to him to act under section 200 or section 202 also; Minu Kuntari v. State of Bihar, (2006) 4 SCC 359

191. Transfer on application of the accused.—When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf. STATE AMENDMENT Punjab and Union Territory of Chandigarh: In section 191, for the words "clause (c) of sub-section (1) of section 190", substitute the words "section 190A" and for the words "Magistrate" and "Chief Judicial Magistrate", substitute the words "Executive Magistrate" and "District Magistrate" wherever occurring. [Vide Punjab Act 22 of 1983, sec. 7 (w.e.f. 27-6-1983).1 — (1) Any Chief Judicial 192. Making over of cases to Magistrates. Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him. (2) Any Magistrate of the first class empowered in this behalf by the Chief JUDicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial. STATE AMENDMENT Punjab and Union Territory of Chandigarh: In section 192, for the words, "Chief Judicial Magistrate" and the words "Magistrate 'Of the first class" or "Magistrate" wherever they occur, substitute the words "District Magistrate" and "Executive Magistrate" respectively. IVide Punjab Act 22 of 1983, sec. 8 (w.e.f. 27-6-1983).1 193. Cognizance of offences by Courts of Session.—Except as-otherwise eXPressly provided by this code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jUrisdiction unless the case has been committed to it by a Magistrate under this Code. Scanned by CamScanner

STATE AMENDMENTS Punjab and Union Territory of Chandigarh: In section 374, in sub-section (3), for the words "Magistrate of the first class" substitute the words "Executive Magistrate". [Vide Punjab Act 22 of 1983, sec. 9 (w.e.f. 27-6-1983).]

STATE AMENDMENT Punjab and Union Territory of Chandigarh: In relation to the "specified offences" as defined in clause (b) of section 2 of the Code of Criminal Procedure (Punjab Amendment) Act, 1983 (22 of 1983), in section 437, after sub-section (7) insert the following sub-section, namely:— Court The Code of Criminal Procedure, 1973 255 Before releasing the accused on bail under sub-section (1) or sub-section (2), the court shall give the prosecution a reasonable opportunity to show-cause against such release." punjab Act 22 of 1983, sec. 10 (w.e.f 27-6-1983).1

The Code of Criminal Procedure, 1973 259 (v) Section 438 makes no distinction whether the arrest is apprehended at the hands , the police or at the instance of the Magistrate; Sennasi v. State of Tamil Nadu, (1997) 3 (vi) The grant of bail under section 438 (1) by the High Court or the Court of Session is dependent on the merits of a case and not the order of the Magistrate choosing to summon an accused through bailable or non-bailable warrant; Sennasi v. State of Tamil Nadu, (1997) 3 Crimes 112 (Mad). / 439. Special powers of High Court or Court of Session regarding bail.— (1) A High Court or Court of Session may direct— (a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section; (b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice. (2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody. STATE AMENDMENTS Section 439A 'Punjab and Union Territory of Chandigarh: After section 439, insert the following section, namely:— "439A. Power to grant bail.— Notwithstanding anything contained in this Code, no person— (a) who, being accused or suspected of committing an offence under any of the following sections, namely—sections 120B, 121, 121A, 122, 123, 124A, 153A, 302, 304, 307, 326, 333, 363, 364, 365, 367, 368, 392, 394, 395, 396, 399, 412, 431, 436, 449 and 450 of the Indian Penal Code, 1860, sections 3, 4, 5, and 6 of the Explosive Substances Act, 1908, and sections 25, 26, 27, 28, 29, 30 and 31 of the Arms Act, 1959, is arrested or appears or is brought before a Court; or (b) who, having any reason to believe that he may be arrested on an accusation of COMMITTING an offence as specified in clause (a), has applied to the High Court or the Court of Session for a direction for his release on bail in the event of his arrest, Shall be released on bail or, as the case may be, directed to be released on bail, except on one or more of the following grounds, namely:— (i) that the Court including the High Court or the Court of Session for reasons to be recorded in writing is satisfied that there are reasonable grounds for believing that such person is not guilty of any offence specified in clause (a); (ii) that such person is under the age of sixteen years or a woman or a sick or an infirm person; (iii) that the Court including the High Court or the Court of Session for reasons to be recorded in writing is satisfied that there are exceptional and sufficient grounds to release or direct that release of the accused on bail". [Vide Punjab Act 22 of 1983, sec. 11 (w.e.f. 27-6-1983).]

1 Tripura: I