

Attachment not illegal, person making same not trespasser for defect or want of form in proceedings

538. No. attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto.

CHAPTER XLVI

MISCELLANEOUS

Courts and persons before whom affidavits may be sworn

539. Affidavits and affirmations to be used before High Court Division or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the State or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in Bangladesh ¹[* * *].

Affidavit in proof of conduct of public servant

²[**539A.**(1) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than High Court Division under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and, in the latter case, the deponent shall clearly state the grounds of such belief.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

Local inspection

539B.(1) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties,

¹ The commas and words ", or Any Commissioner to administer oaths in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² Sections 539A and 539B were inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost:

¹[* * *]]

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Power to
summon
material witness
or examine
person present

540A.(1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by ²[an advocate], dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

Provision for
inquiries and
trial being held
in the absence
of accused in
certain cases

(2) If the accused in any such case is not represented by ³[an advocate], or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for

¹ Proviso was omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

² The words "an advocate" were substituted, for the letter and word "a pleader" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ The words "an advocate" were substituted, for the letter and word "a pleader" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

Power to appoint place of imprisonment

541.(1) Unless when otherwise provided by any law for the time being in force, the Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under subsection (2), he shall, on being released therefrom, be sent back to the civil jail, unless either—

- (a) three years have lapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under ¹[section 58] of the ²[Code of Civil Procedure, 1908]; or
- (b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under ³[section 58] of the ⁴[Code of Civil Procedure, 1908].

542. [Repealed by section 3 and II Schedule of the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951).]

Interpreter to be bound to interpret truthfully

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

¹ The word and figure "section 58" were substituted for the word and figure "section 342" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words, comma and figure "Code of Criminal Procedure, 1908" were substituted, for the words "Code of Civil Procedure" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ The word and figure "section 58" were substituted, for the word and figure "section 341" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

⁴ The words, comma and figure "Code of Criminal Procedure, 1908" were substituted, for the words "Code of Civil Procedure" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

544. Subject to any rules made by the Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Expenses of complainants and witnesses

545.(1) Wherever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

Power of Court to pay expenses or compensation out of fine

- (a) in defraying expenses properly incurred in the prosecution;
- (b) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;
- (c) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser, of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Payments to be taken into account in subsequent suit

¹[**546A.**(1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused,

Order of payment of certain fees

¹ Section 546A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

paid by complainant in non-cognizable cases

may in addition to the penalty imposed upon him, order him to pay to the complainant—

- (a) the fee (if any) paid on the petition of compliant or for the examination of the complainant, and
- (b) any fees paid by the complainant for serving processes on his witnesses or on the accused,

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an Appellate Court, or by the High Court Division, when exercising its powers of revision.]

Moneys ordered to be paid recoverable as fines

547. Any money (other than a fine) payable by virtue of any order made under this code, and the method of recovery of which is not otherwise expressly provided for shall be recoverable as if it were a fine.

Copies of proceedings

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of ¹[* * *] any order or deposition or other part of the record be shall, on applying for such copy, be furnished therewith:

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Delivery to military authorities of persons liable to be tried by Court martial

549.(1) The Government may make rules consistent with this Code and the Army Act, 1952 (XXXIX of 1952), the Air Force Act, 1953 (VI of 1953), and the Navy Ordinance, 1961 (XXXV of 1961), and any similar law for the time being in force as to the cases in which persons subject to military, naval or air force law, shall be tried by a Court to which the Code applies, or by Court martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the

¹ The words "the Judge's charge to the jury or of" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance XLIX of 1978).

commanding officer of the regiment, corps, ship or detachment, to which he belongs, or to the commanding officer of the nearest military, naval or air-force station, as the case may be, for the purpose of being tried by Court-martial.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of soldiers, sailors or airman stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Apprehension
of such persons

550. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

Powers to
police to seize
property
suspected to be
stolen

551. Police -officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Powers of
superior officers
of police

552. Upon complaint made to a¹[Metropolitan Magistrate or] District Magistrate on oath of the abduction or unlawful detention of woman, or of a female child under the age of sixteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Power to
compel
restoration of
abducted
females

553. [Repealed by section 3 and II Schedule of the Federal Laws (Revision and declaration) Act, 1951 (Act No. XXVI of 1951).]

¹ The words "Metropolitan Magistrate or" were inserted by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

Power of chartered High Court Division to make rules for inspection of records of subordinate Courts

554.(1) With the previous sanction of the ¹[Government, the Supreme Court] may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of other High Court Division to make rules for other purposes

(2) ²[The Supreme Court] may, from time to time, and with the previous sanction of the Government—

- (a) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;
- (b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;
- (c) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and
- (d) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the official Gazette.

Forms

555. Subject to the power conferred by section 554, and by ³[article 107 of the Constitution of the People's Republic of Bangladesh], the forms set forth in the fifth schedule, with such

¹ The words and comma "Government, the Supreme Court" were substituted, for the words and comma "Government, any High Court Division" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

² The words "The Supreme Court" were substituted, for the words "Every High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ The words and figure "article 107 of the Constitution of the People's Republic of Bangladesh" were substituted, for the words and figures "Article 101 and 102 of the Constitution" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

variation as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

556. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try ¹[* * *] for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or make himself.

Case in which Judge or Magistrate is personally interested

Explanation—A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

Illustration

A, as Collector, upon consideration of information furnished to him, directs the prosecution of B or a breach of the excise Laws. A is disqualified from trying this case as a Magistrate.

557. No pleader who practices in the Court of any Magistrate in a district, shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.

Practicing pleader not to sit as Magistrate in certain Courts

558. The Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by ²[it].

Power to decide language of Courts

559.(1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

Provision for powers of Judges and Magistrates being exercised by their successors in office

¹ The words "or commit for trial" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

² The word "it" was substituted, for the words and comma "it, other than the Supreme Court" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(2) When there is any doubt as to who is the successor in office of any Magistrate, ¹[the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate] shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge.

Officers concerned in sales not to purchase or bid for property

560. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Special provision with respect to offence of rape by a husband

561.(1) Notwithstanding anything in this Code, no Magistrate ²[except the Chief Metropolitan Magistrate or a District Magistrate shall—

- (a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or
- (b) ³[send] the man for trial for the offence.

(2) And, notwithstanding anything in this Code, ⁴[if the Chief Metropolitan Magistrate or a] District Magistrate deems it necessary to direct an investigation by a police-officer,

¹ The words and commas "the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate" were substituted, for the words "the District Magistrate" by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

² The words and letter "except the Chief Metropolitan Magistrate or a" were substituted, for the word and letter "except a" by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

³ The word "send" was substituted, for the word "commit" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

⁴ The words and letter "if the Chief Metropolitan Magistrate or a" were substituted, for the word "if a" by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

with respect to such an offence as is referred to in sub-section (1), no police-officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation.

¹[561A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court Division to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.]

Saving of inherent power of High Court Division

First Offenders

562-564. [Repealed by section 16 of the Probation of Offenders Ordinance, 1960 (Ordinance No. XLV of 1960).]

Previously convicted offenders

565.(1) When any person having been convicted—

- (a) by a Court in Bangladesh of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment of either description for a term of three years or upwards, or

Order for notifying address of previously convicted offender

²[* * *],

is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by the High Court Division, Court of Session, ³[Metropolitan Magistrate], District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also

¹ Section 561A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

² Clause (b) was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ The words "Metropolitan Magistrate" were inserted by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

order that his residence and any change of or absence from such residence after release be notified as herein after provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Government may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

(4) An order under this section may also be made by an Appellate Court or by the High Court Division when exercising its powers of revision.

(5) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.

SCHEDULE I. – [Repealed by section 3 and 2nd Schedule of the Repealing and Amending Act, 1914 (Act No. X of 1914).]