

CHAPTER XLV

OF IRREGULAR PROCEEDINGS

529. If any Magistrate not empowered by law to do any of the following things, namely:—

Irregularities which do not vitiate proceedings

- (a) to issue a search-warrant under section 98;
- (b) to order, under section 155, the police to investigate an offence;
- (c) to hold an inquest under section 176;
- (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;
- (e) to take cognizance of an offence under section 190, subsection (1), clause (a), or clause (b);
- (f) to transfer a case under section 192;
- (g) to tender a pardon under section 337 or section 338;
- (h) to sell property under section 524 or section 525; or
- (i) to withdraw a case and try it himself under section 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—

Irregularities which vitiate proceedings

- (a) attaches and sells property under section 88;
- (b) issues a search-warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department;
- (c) demands security to keep the peace;
- (d) demands security for good behaviour;
- (e) discharges a person lawfully bound to be of good behaviour;
- (f) cancels a bond to keep the peace;

- (g) makes an order under section 133 as to a local nuisance;
- (h) prohibits, under section 143, the repetition or continuance of a public nuisance;
- (i) issues an order under section 144;
- (j) makes an order under Chapter XII;
- (k) takes cognizance, under section 190, sub-section (1) clause (c), of an offence;
- (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate;
- (m) calls, under section 435, for proceedings;
- (n) makes an order for maintenance;
- (o) revises, under section 515, an order passed under section 514;
- (p) tries an offender;
- (q) tries an offender summarily; or
- (r) decides an appeal;

his proceedings shall be void.

Proceedings in wrong place

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

532. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]

Non-compliance with provisions of section 164 or 364

533.(1) If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly make the statement recorded; and, notwithstanding anything contained in the Evidence Act, 1872, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts of Appeal, Reference and Revision.

534. [Omitted by Schedule of the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (Act No. II of 1950).]

535.(1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

Effect of omission to prepare charge

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

536. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

Finding or sentence when reversible by reason of error or omission in charge or other proceedings

- (a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

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²[* * *]

Explanation—In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

¹ Clause (b) was repealed by section 148 of the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

² Clauses (c) and (d) were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

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).