

## CHAPTER XXIV

## GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

Tender of  
pardon to  
accomplice

**337.**(1) In the case of any offence triable exclusively by the <sup>1</sup>[\*\*\*] Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under section 211 of the Penal Code, with imprisonment which may extend to seven years, or any offence under any of the following sections of the Penal Code, namely, sections 216A, 369, 401, 435 and 477A, the District Magistrate, <sup>2</sup>[a Metropolitan Magistrate] a Sub-divisional Magistrate or any Magistrate of the first class may, at any state of the investigation or inquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof.

(1A) Every Magistrate who tenders a pardon under subsection (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record:

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

<sup>1</sup> The words "High Court Division or" were omitted by section 2 and Schedule of the Law Reform Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The letter and words "a Metropolitan Magistrate" were inserted by section 2 and Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

(2) Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

(2A) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, <sup>1</sup>[send] him for trial to the Court of Session <sup>2</sup>[\* \* \*].

(3) Such persons, unless he is already on bail, shall be detained in custody until the termination of the trial.

**338.** At any time <sup>3</sup>[before the judgment is passed, the Court of Session trying the case] may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any such offence, tender, or order <sup>4</sup>[\* \* \*] or the District Magistrate to tender, a pardon on the same condition to such person.

Power to direct tender of pardon

**339.**(1) Where a pardon has been tendered under section 337 or section 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made such person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter:

<sup>5</sup>[Trial] of person to whom pardon has been tendered

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<sup>1</sup> 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).

<sup>2</sup> The words and comma "or High Court Division, as the case may be" were omitted, by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The words and comma "before the judgment is passed, the Court of Session trying the case" were substituted, for the words and comma "after commitment, but before judgment is passed, the Court to which the commitment is made" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The words "the committing Magistrate or" were omitted, by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>5</sup> The word "Trial" was substituted, for the word "Commitment" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made; in which case it shall be for the prosecution to prove that such conditions have not been complied with.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court Division.

Procedure in trial of person under section 339

<sup>1</sup>[339A.(1) The Court trying under section 339 a person who has accepted a tender of pardon shall

- (a) if the Court is <sup>2</sup>[\* \* \*] Court of Session before the charge is read out and explained to the accused under <sup>3</sup>[section 265D, sub-section (2)], and
- (b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and <sup>4</sup>[\* \* \*] shall, before judgment is passed in the case find whether or not the accused has complied with the conditions of the pardon and if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.]

<sup>1</sup> Section 339A was inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>2</sup> The words "High Court Division or" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The words, figures, comma and brackets "section 265D, sub-section (2)" were substituted, for the words, comma and brackets "section 271, sub-section (1)" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The words and commas "the jury, or the Court with the aid of assessors, or the Magistrate, as the case may be," were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>1</sup>[**339B.**<sup>2</sup>(1) Where after the compliance with the requirements of section 87 and section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect of arresting him, the Court taking cognizance of the offence complained of shall, by order <sup>3</sup>[published in at least two national daily Bengali Newspapers having wide circulation], direct such person to appear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.]

Trial in  
absentia

(2) Where in a case after the production or appearance of an accused before the Court or his release on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply and the Court competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence.

**339C.**(1) A Magistrate shall conclude the trial of a case within <sup>4</sup>[one hundred and eighty days] from the date on which the case is <sup>5</sup>[received by him] for trial.

Time for  
disposal of  
cases

(2) A Sessions Judge, an Additional Sessions Judge or an Assistant Sessions Judge shall conclude the trial of a case within <sup>6</sup>[three hundred and sixty days] from the date on which the case is received by him for trial.

<sup>1</sup> Sections 339B and 339C were inserted by section 24 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> Sub-section (1) was substituted, for sub-section (1) by the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982), section 10.

<sup>3</sup> The words "published in at least two national daily Bengali Newspapers having wide circulation" were substituted, for the words and comma "notified in the *official Gazette*, and also published in at least one Bengali daily Newspaper" by section 6 of the Code of Criminal Procedure (Amendment) Act, 1991 (Act No. XVI of 1991).

<sup>4</sup> The words "one hundred and eighty days" were substituted, for the words "one hundred and twenty days" by section 3 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).

<sup>5</sup> The words "received by him" were substituted, for the words and comma "taken cognizance of, or received by him" by section 11 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>6</sup> The words "three hundred and sixty days" were substituted, for the words "two hundred and forty days" by section 3 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).

<sup>1</sup>[(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where a person is accused in several cases and such cases are brought for trial before a Magistrate or a Court of Session, the time limit specified in sub-section (1) or sub-section (2) for the trial of such cases shall run consecutively.]

<sup>2</sup>[(2B) Notwithstanding the transfer of a case from one Court to another Court, the time specified in sub-section (1) or sub-section (2) shall be the time for concluding the trial of a case.]

(3) [Omitted by section 3 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).]

<sup>3</sup>[(4) If a trial cannot be concluded within the specified time, the accused in the case, if he is accused of a non-bailable offence, may be released on bail to the satisfaction of the Court, unless for reasons to be recorded in writing, the Court otherwise directs.]

<sup>4</sup>[(5) Nothing in this section shall apply to the trial of a case under section 400 or 401 of the Penal Code (Act XLV of 1860), or to the trial of case to which the provisions of Chapter XXXIV apply.]

<sup>5</sup>[(6) In this section, in determining the time for the purpose of a trial,—

<sup>6</sup>[\* \* \*]

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<sup>1</sup> Sub-section (2A) was inserted by section 11 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>2</sup> Sub-section (2B) was inserted by section 7 of the Code of Criminal Procedure (Amendment) Act, 1991 (Act No. XVI of 1991).

<sup>3</sup> Sub-section (4) was substituted, for the former sub-section (4) by section 3 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).

<sup>4</sup> Sub-section (5) was substituted, for the former sub-section (5) by section 2 of the Code of Criminal Procedure (Amendment) Ordinance, 1985 (Ordinance No. XXIX of 1985).

<sup>5</sup> Sub-section (6) was substituted, for the former sub-section (6) by section 7 of the Code of Criminal Procedure (Amendment) Act, 1991 (Act No. XVI of 1991).

<sup>6</sup> Clause (a) was omitted by section 7 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).

- (b) the days spent on account of the absconsion of an accused after his release on bail, if any, shall not be counted.]

**339D.** [Omitted by section 4 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).]

**340.**(1) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

Right of person against whom proceedings are instituted to be defended and his competency to be a witness

(2) Any person against whom proceedings are instituted in any such Court under section 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings.

<sup>1</sup>[(3) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

- (a) he shall not be called as a witness except on his own request in writing; or
- (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any persons charged together with him at the same trial.]

**341.** If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than High Court Division, if such <sup>2</sup>[proceedings result] in a conviction, the proceedings shall be forwarded to the High Court Division with a report of the circumstances of the case, and the High Court Division shall pass thereon such order as it thinks fit.

Procedure where accused does not understand proceedings

<sup>1</sup> Sub-section (3) was added by section 2 and Schedule of the Law Reform Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "proceedings result" were substituted, for the words and comma "inquiry result in a commitment, or if such trial results" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Power to  
examine the  
accused

**342.**(1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court <sup>1</sup>[\* \* \*] may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath shall be administered to the accused.

No influence to  
be used to  
induce  
disclosures

**343.** Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Power to  
postpone or  
adjourn  
proceedings

**344.**(1) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Remand

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by a Court other than High Court Division shall be in writing signed by the presiding Judge or Magistrate.

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<sup>1</sup> The words and brackets "and the jury (if any)" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

**Explanation**– If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Reasonable  
cause for  
remand

**345.(1)** The offences punishable under the sections of the Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:–

Compounding  
offences

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt ....	323,334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass	447	The person in possession of the property trespassed upon.
House-trespass	448	
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	



Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Defamation	500	The person defamed.
Printing or engraving matter, knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

(2) The offences punishable under the sections of the Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table—

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
<sup>1</sup> [Rioting.	147	The person against whom force or violence has been used.
Rioting armed with deadly weapon.	148	Ditto.]
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	Ditto.

<sup>1</sup> Sections 147 and 148 and the entries relating thereto were inserted by section 25 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	The person to whom hurt is caused.
<sup>1</sup> [Act endangering human life or the personal safety of others.	336	Ditto.]
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more	343	The person confined.
<sup>2</sup> [Wrongfully confining for ten or more days.	344	Ditto.]
Wrongfully confining a person in secret.	346	Ditto.
<sup>3</sup> [Wrongfully confinement to extort property or constrain to illegal act.	347	The person wrongfully confined.
Wrongful confinement to extort confession or compel restoration of property.	348	Ditto.]
<sup>4</sup> [Assault or criminal force to women with intent to outrage her modesty.	354	The women assaulted or to whom the criminal force was used.]

<sup>1</sup> Section 336 and the entries relating thereto were inserted by section 25 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> Section 344 and the entries relating thereto were inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> Sections 347 and 348 and the entries relating thereto were inserted by section 25 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>4</sup> Section 354 and the entries relating thereto were inserted by Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
<sup>1</sup> [Assault or criminal force in attempt to commit theft of property worn or carried by a person.	356	The person assaulted or to whom criminal force is used.]
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
<sup>2</sup> [Theft <sup>3</sup> [* * *].	379	The owner of the property stolen.]
<sup>4</sup> [Theft in dwelling house.	380	Ditto.]
<sup>5</sup> [Theft by clerk or servant of property in possession of master <sup>6</sup> [* * *].	381	Ditto.]
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
<sup>7</sup> [Criminal breach of trust <sup>8</sup> [***].	406	The owner of the property in respect of which the breach of trust has been committed.

<sup>1</sup> Section 356 and the entries relating thereto were inserted by section 2 and Schedule of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> Sections 379 and 381 and the entries relating thereto were inserted by the Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The comma and the words ", where the value of the property stolen does not exceed taka five hundred" were omitted by section 12 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>4</sup> Section 380 and the entries relating thereto was inserted by section 2 and Schedule of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>5</sup> Sections 381 and the entries relating thereto were inserted by the Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>6</sup> The comma and the words ", where the value of the property stolen does not exceed taka five hundred" were omitted by section 12 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>7</sup> Sections 406, 407, 408, 411 and 414 and the entries relating thereto were inserted by the Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>8</sup> The comma and the words ", where the value of the property does not exceed taka five thousand" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

Offence.	Sections of the Penal Code applicable.	Persons by whom offence may be compounded.
Criminal breach of trust by a carrier, wharfinger, etc. <sup>1</sup> [***].	407	Ditto.
Criminal breach of trust by a clerk or servant <sup>2</sup> [***].	408	Ditto.
Dishonestly receiving stolen property, knowing it to be stolen <sup>3</sup> [* * *].	411	The owner of the property stolen.
Assisting in the concealment or disposal of stolen property, knowing it to be stolen <sup>4</sup> [* * *].	414	Ditto.]
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	Ditto.
Cheating by personation	419	Ditto.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
<sup>5</sup> [Fraudulent removal or concealment of property, etc. to prevent distribution among creditors.	421	The creditors who are affected thereby.

<sup>1</sup> The comma and the words ", where the value of the property does not exceed taka five thousand" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>2</sup> The comma and the words ", where the value of the property does not exceed taka five thousand" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>3</sup> The comma and the words ", where the value of the property does not exceed taka five thousand" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>4</sup> The comma and the words ", where the value of the stolen property does not exceed taka five hundred" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>5</sup> Sections 421, 422, 423, 424, 428 and 429 and the entries relating thereto were inserted by the Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.
Mischief by killing or maiming animal <sup>1</sup> [* * *].	428	The owner of the animal.
Mischief by killing or maiming cattle, etc. <sup>2</sup> [* * *].	429	The owner of the cattle, or animal.]
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	Ditto.

<sup>1</sup> The words "of the value or taka ten or upwards" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>2</sup> The comma and words ", of any value or any other animal of the value of taka fifty or upwards" were omitted by section 12 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

Offence.	Sections of the Penal Code applicable.	Persons by whom offence may be compounded.
<sup>1</sup> [Cohabitation caused by a man deceitfully including a belief of lawful marriage.]	493	The woman with whom cohabitation was caused.]
Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.
<sup>2</sup> [Attempting to commit offences punishable with transportation or imprisonment.]	511	The person against whom such attempt was made for committing the offence.]

(3) When any offence is compoundable under this section, the abatement of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may with the permission of the Court compound such offence.

(5) When the accused has been <sup>3</sup>[sent] for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to

<sup>1</sup> Section 493 and the entries relating thereto was inserted by section 25 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> Section 511 and the entries relating thereto was added by section 25 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>3</sup> The word "sent" was substituted, for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

which he is <sup>1</sup>[sent] or, as the case may be, before which the appeal is to be heard.

(5A) The High Court Division acting in the exercise of its powers of revision under section 439 <sup>2</sup>[, and a Court of Session so acting under section 439A,] may allow any person to compound any offence which he is competent to compound under this section.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(7) No offence shall be compounded except as provided by this section.

Procedure of  
<sup>3</sup>[\* \* \*]  
Magistrate in  
cases which he  
cannot dispose  
of

**346.**(1) If, in the course of an inquiry or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption that the case is one which should be tried or <sup>4</sup>[sent] for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or <sup>5</sup>[send] the accused for trial.

<sup>1</sup> The word "sent" was substituted, for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The commas, words, letter and figure ", and a Court of Session so acting under section 439A," were inserted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The word "Provincial" in the marginal heading was omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The word "sent" was substituted, for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>5</sup> 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).

<sup>1</sup>[347. Notwithstanding anything contained in this Code, whenever a Magistrate of the first class is of opinion, after recording the evidence for the prosecution, that if the accused or, where more accused than one are being tried together, any of such accused is convicted he should receive a punishment more severe than that which such Magistrate is empowered to inflict, he may record his opinion and submit his proceedings, and forward the accused, or all the accused, to the Court of Session to which he is subordinate, whereupon the Court of Session shall try the case as if the case were exclusively triable by it under this Code.]

Procedure when higher punishment should be inflicted on accused

**348.**(1) Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Penal Code, with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for <sup>2</sup>[sending] the accused be <sup>3</sup>[sent] to the Court of Session or <sup>4</sup>[\*\*\*] unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted:

Trial of persons previously convicted of offences against coinage, stamp-law or property

Provided that, if any Magistrate in the district has been invested with powers under section 30, the case may be transferred to him instead of being <sup>5</sup>[sent] to the Court of Session.

<sup>1</sup> Section 347 was substituted, for section 347 by section 5 of the Code of Criminal Procedure (Second Amendment) Act, 1980 (Act No. XXX of 1980).

<sup>2</sup> The word "sending" was substituted, for the word "committing" by section 2 and Schedule of the Law Reform Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The word "sent" was substituted, for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The words and comma "or High Court Division, as the case may be" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>5</sup> The word "sent" was substituted, for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).



(2) When any person is <sup>1</sup>[sent] to the Court of Session <sup>2</sup>[\*\*\*] under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly <sup>3</sup>[sent] unless the Magistrate discharges such other person under <sup>4</sup>[section 241A].

Procedure when Magistrate cannot pass sentence sufficiently severe

**349.**(1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

(1A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate.

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law:

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

<sup>1</sup> The word "sent" was substituted, for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words "or High Court Division" were omitted, by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The word "sent" was substituted, for the word "committed" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The word, figure and letter "section 241A" were substituted, for the words, figures, letters and comma "section 250B or section 250H, as the case may be" by section 13 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>1</sup>[349A.(1) Whenever any Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, after having heard and recorded the whole or any part of the evidence in a trial, ceases to exercise jurisdiction therein, and is succeeded by another Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, as the case may be, who has and who exercises such jurisdiction, the Judge so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the trial:

Conviction on evidence partly recorded by one Sessions Judge, etc., and partly by another

Provided that if the succeeding Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, as the case may be, is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one Court of Session to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1).]

**350.**(1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the inquiry or trial:

Conviction <sup>2</sup>[\*\*\*] on evidence partly recorded by one Magistrate and partly by another

<sup>3</sup>[Provided that if the succeeding Magistrate is of opinion that further examination of any of the witnesses whose evidence

<sup>1</sup> Section 349A was inserted by section 14 of the Code of Criminal Procedure (Third Amendment) Ordinance, 1982 (Ordinance No. LX of 1982).

<sup>2</sup> The words "or commitment" in the marginal heading were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The proviso was substituted, for the original proviso by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.]

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346 or in which proceedings have been submitted to a superior Magistrate under section 349.

(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1).

Changes in  
constitution of  
Benches

<sup>1</sup>[**350A.** No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under sections 15 and 16, and the Magistrates constituting the same have been present on the Bench throughout the proceedings.]

Detention of  
offenders  
attending Court

**351.**(1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

(2) When the detention takes place <sup>2</sup>[\* \* \*] after a trial has been begun the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

Courts to be  
open

**352.** The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

<sup>1</sup> Section 350A was inserted by section 94 of the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>2</sup> The words and figure "in the course of an inquiry under Chapter XVIII or" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

### CHAPTER XXV

#### OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

**353.** Except as otherwise expressly provided, all evidence taken under Chapters <sup>1</sup>[\* \* \*] XX, <sup>2</sup>[\* \* \*] XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Evidence to be taken in presence of accused

**354.** In inquiries and trials (other than summary trials) under this Code by or before a Magistrate or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Manner of recording evidence

**355.(1)** <sup>3</sup>[In cases tried under Chapter XX or Chapter XXII] by a Magistrate of the first or second class and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Record <sup>4</sup>[\*\*\*] in trials of certain offences by first and second class Magistrates

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

<sup>1</sup> The figure and comma "XVIII," were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The figure and comma "XXI," were omitted by section 26 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982)

<sup>3</sup> The words and figures "In cases tried under Chapter XX or Chapter XXII" were substituted, for the words, figures, brackets, letters and commas "In summons-cases tried before a Magistrate and in the cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive, when tried" by section 27 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>4</sup> The words "in summons-cases and" were omitted by section 27 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).